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H – 1251

International Court of Justice

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Key to the Final Pleading of the Defense Counsel:

Dr. Dr. Otto NELTE

for the defendant:

Field Marshal (ret.) Wilhelm KEITEL

Pages 1 - 9 (inclusive)

Pages 10 - 15 I add below line 8 one sentence, then continue until

Page 18 line 8 I do not present:

page 18, line 8 to the end of the page as well as

page 19 - 21 on the bottom (5th line from the bottom)

Page 21 (the five last lines) to page 25

Pages 26 - 31

Pages 32 - 42 (I will present the quotations on pages 36 - 39 only partially)

Page 43

I do not present pages 44 - 46

Pages 47 - 50

Pages 51 - 57 (I will mention the positions 1 - 16 on pages 51/52 only summarily)

Page 58 I will not present the last three lines of this page

Page 58 - 77 (I will only read a few sentences from the testimony of Dr.LAMMERS and from the Affidavit von BLOMBERG, following here)

Pages 78 - 96

Pages 97 - 105 I read only a few excerpts

105 - 106

Pages 107 - 110

Pages 111 - 124

Page 125

Pages 126 - 136 I will present this summarizing

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Pages 137 - 142 I will also present this summarily

Pages 143 - 147

Pages 148 - 153

Pages 154 - 160

Pages 161 - 170 (On page 161, paragraph 1, there follows an inserted sentence, then continue on page 165, beginning 1 to the end)

Pages 171 - 173

Pages 174 - 183

Page 183 Individual case 1 (to 184)

Individual case 2 is shortened

" " 3 (Page 188)

" " 4 (Page 188 is shortened)

Pages 190 - 195 (End) entirely

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Dr. Ne.
Closing Arguments.

"We must approach our task with so much inner deliberation and mental integrity that this trial will later appear to posterity as the fulfillment of human longing for justice."

These words of Justice Jackson's in his opening indictment speech must be the guiding principle for all those who have been entrusted with the noble task of contributing to the search for truth in this trial. That this truth cannot be absolute, the Prosecutors, Justice Jackson and Mr. Dubost have already stated. The purpose of the indictment is not to determine the historical aspect, let alone the historical development, of this short but so tragically important period, but instead to find out whether and to what extent the defendants sitting on this bench partook in the events which have affected the entire world by their consequences and which have brought such indescribable misery upon it and not least upon the German people.

In this trial the prosecution once stated through one of its qualified spokesmen that it was its task to submit material that would incriminate the defendants, and to submit only such incriminating evidence. Thus in contrast to the principle of objective accusation which dominates the German criminal proceedings, it made clear its definitely biassed standpoint in indictment which obliges the defense to submit all circumstances and considerations which are indispensible for an objective administration of justice. For this purpose it is first necessary to clarify certain concepts which are needed for the perception of responsibility

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and guilt. As far as concepts of International and Constitutional Law are concerned they have been examined and presented by Professor Dr. J a h r r e i s .

With regard to the sphere of the soldier I should like to make some fundamental statements.

There have been repeated references here to the concepts of soldierly conduct, obedience, loyalty, performance of duty and patriotism. It is my belief that all men recognize these concepts to be good. But it is permissible to say that not all of these concepts are unequivocal. Thus are confronted:

"best soldierly conduct" and "militarism"
"natural obedience" and "despicably blind obedience"
"the categoric imperative of the performance of duty" and
"the exaggerated sense of responsibility"
"the deep love for the country" and "chauvinism",

We see that all these concepts can run through the scale of good and evil. The origin and the essence of these concepts is everywhere the same, but the form they take on through tradition and education, and thus the effects they have, vary greatly.

However, if this is the case, who then should differentiate and decide whether the feeling is still in the realm of good or has already reached the sphere of evil?

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We are all of us living in a world whose century old striving has aimed at the creation of order. Order is certainly a relative concept, too, but it is everywhere the establishment of the relationship of human beings to each other which guarantees the best possible means of living peacefully side by side ... in view of the intrinsic character of each country.

This holds true both for the state and for the relationship between nations.

Who should determine in this order what is right and what is wrong? The criterion for this might be, according to hitherto acquired knowledge, only a constitutional, i.e. a national one. The drawing closer of the nations in world traffic and general civilization brought with them the result that the various national conceptsbecame adjusted to each other in spite of many differences. It must be admitted that this process of adjustment suffered a harmful set-back through certain national-socialist doctrines and their methods. Nevertheless,the principle remains inviolable that the criterion of right or wrong must be a national one if order is not to be dissolved. The only thing worth striving for is: the adjustment of nations and national fundamental concepts to each other as is now being attempted through world organization.

If the national criterion, i.e. the national judgment of good and bad, right and wrong, was well-established in any case up to now, the concepts were never deprived of their relativity, especially when national differences existed for other reasons. A convincing example of this is the opinion expressed about the resistance movement.

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All countries celebrate what is considered to be the highest form of patriotism when someone risks his life for his country and exposes himself to the greatest danger. According to the Hague Rules of Land Warfare it is a fact that such a resistance movement is forbidden. We have here a clear example of the contrast between ethical and legal evaluation. This proves that there are no absolute concepts of good and bad, or right and wrong, and that above all written law there are unwritten laws which aquit the wrong doer because he obeyed higher laws. These higher laws, however, also depend on subjective and national -i.e. collectively subjective-considerations. If men believe something to be good or right this faith may come into existance out of an actually higher law, a truly, higher idea, but it may also grow out of a misled faith, out of a false idea. Who wishes to or who is able to judge whether a faith or an idea was or was not right? History has proven that usually the successful idea is recognized as right, to a certain extent because it is the judgment of God. I do not wish to decide whether that is always true. The question here, however, is whether the people whose guilt is to be judged, acted in good faith, in accordance with such an idea and such a faith. If divine judgment has shown this faith to be wrong the question remains open whether it was for comprehensible or explainable reasons that people could believe the idea to be good.

This question constitutes the problem which concerns not only defendant Keitel but also the entire German nation. According to the speech of the French prosecution not only the defendants in this trial are the really guilty ones but the entire German nation.

Closing Arguments.

The extent and importance of this thesis are tremendous. Should the Tribunal- if only in the grounds for its decision- come to the conclusion that the entire German nation is guilty, every German for incalculable time will bear the brand of Cain which finally must lead to the destruction of this people, and its dissolution.

It has been stated most authoritatively that there is no intention here of accusing the entire German people. Through unconditional surrender we are left entirely to the mercy of the victorious powers. It was said however, that the verdict of this tribunal is to be just. Here in this court it is not clemency or inclemency which are to be the guiding principle, but justice. Justice does not mean mildness. A verdict, however, will only be just if it takes into consideration all the circumstances which lie under/the actions and conduct of the defendants. There is no excuse for what has happened and for what/the forms subject of this indictment. I can only try to give you an analysis. The misery, the misfortune that has fallen on the entire human race is so great that words do not suffice to express it. The German people especially after havin learnt the catastrophe that has befallen the nations in the West an East and the Jews, is shaken with horror and pity for the vietims. The German nation knows what this misfortune means; for it is stricken as hardly any other people is, not only in the military field but through the sinister consequences of air attacks, through the loss of millions of its youth in the field, through evacuations and escapes in ice and snow. We know, therefore, what it means to be in misery, to have to suffer. But while other nations are able to look upon this misery and misfortune as a chapter

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of the past and in the protection of constitutional order have the comforting hope of returning to an orderly existence and a happy future, there still rests upon this nation the gloom of despair. By affirming the guilt of the entire nation the verdict of the Tribunal would perpetuate this despair. The German people does not expect to be acquitted. It does not expect the cloak of Christian charity and oblivion to be spread over all that has happened. The German nation is ready to the last to take the consequences upon itself. It is willing to accept its fate and to do everything to participate in removing the consequences. It hopes, however, that the souls and hearts of the rest of mankind will not be so hardened that the existing tension, in fact the existing gulf between this nation and the rest of mankind will remain.

Your task, your Honors, is a terribly hard one. We not only speak different languages, all of us feel with the soul of our own country. Much of what has happened in this country will seem incomprehensible to you. The feelings of the German people in the different categories are not your feelings. One of the most essential points, especially in the case of the soldiers, seems to me the way of judging what is felt to be liberty. In this country, too, the ideal of liberty was proclaimed. All of us know that the most extreme form of liberty is anarchy. No state desires anarchy because it surrender means of its own existence. If, therefore, all countries agree that the absolute concept of freedom is never worth striving for and can never be sanctioned,

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there results perforce relativity of the concept of freedom. No concept has been so misused as the concept of freedom and yet every political system proclaims freedom as the greatest of all blessings.

I by no means wish to say that the concept of freedom as proclaimed by nationa socialism was the right solution. What I do wish to say, however, is that national socialism also knew the concept of freedom and made it clear to the people through propaganda that its conception of freedom was the right one. National socialism was aided in this by the fact that under the effects of the Treaty of Versailles Germany could indeed make no claim to be really free. The limitations of its sovereignty were so pronounced and so evident that it was easy for national socialism to proclaim the fight for the freedom of the fatherland. As long as the fatherland is recognized in the world as the highest earthly possession one will have to understand endeavours to keep this possession and one will not be able to disapprove of them even when it is an adversary who makes them. One may be of a different opinion as to the method which should be used for the realization of these endeavours, and as to how freedom is to be attained. This, however, is not decided by the individual, but by that person or those persons who hold the power in a state. Every human being wants something to hold on to in life, he must have it if he is not to fall into despair or anarchy. The national order is - besides the moral order - a firm support and the foundation of his existance

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and this gives him a feeling of security in his life and professional activities. It is the deep longing of all civilized men for order which finds its highest fulfillment in the institutions of the state. On the other hand the citizen must have confidence that the state, i.e. its official agencies, will safeguard law and order. In this respect it should not matter which party provides the guardians of its inviolable principles. That is just where the confidence of a nation as a whole expresses itself, namely by leaving leadership to the prevailing majority. National socialism undoubtedly aimed at and succeeded in rousing the belief in wide circles of the German people that its endeavours were supported by the majority of the people. It thereby procured for itself the alibi of legality.

Far from all political considerations, as all the generals and admirals have testified here, the leaders of the Wehrmacht believed in the legitimacy of Hitler's government. It looked upon itself as the instrument of a legal government, as it did when the Kaiser, Ebert and von Hindenburg were Germany's representatives.

Like all tendencies, all forms of expression of a feeling, the feeling of patriotism and of a soldierly attitude bears in itself a tendency to become more radical and thereby to degnerate if external circumstances create and actual basis for it. We have experienced the exaggeration of sound national ideas and their development into national chauvinism and we can observe retrospectively how the sound soldierly idea was exaggerated by influences foreign to its nature and transformed into the militaristic way of thinking.

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Dr. Ne.

Closing Arguments

All these developments are not desultory, which makes them easily recognizable and regulated. The driving forces are mostly not apparent to those whom they concern. They are like a poison which acts slowly and unnoticed, and the effect of which finds some day a horrible eruption: . It needs no special reasoning that a part of the soldierly and military person who is being geared to a possible war, is ruggedness, and in its potentiality turns into brutality. One often finds on the part of famous, and not only German war leaders, the stand point that the brutal war is frequently the mildest one if it leads to a quick ending. This, of course, is desired by every war leader. Once the obstacles of peace are removed by the war, all that remains is: brutality. It reveals the causes of total war and the source of the terrible disaster, which resulted from it.

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The Defense Counsel's Task and the Evidence.

The defense has a difficult task in this trial. The German people looks to Nuernberg -and with dissension in itself. Some are sceptical and partly hostile toward the defense because they believe the defense is favoring those whom they consider as war criminals and believe that the defense wishes to prevent that just punishment be meted out to the defendants. Others say this trial is just a show, at which the defense counsels act as dummies to give the trial the appearance of a judicial procedure. Accordingly, in the view of these Germans we shall make ourselves guilty of patronizing the enemy.

We have no reason to justify our actions because by our participation at this trial we are fulfilling an obligation in line with the precept of our calling, which needs no justification.

It consists of coordinating our efforts in the interest of clarifying the truth, the importance and effects of which on the German people is today incalculable, in getting to the bottom of the causes, and in answering the question of how all this could happen.

Only the clear recognition of the cause, the forces and the people that brought on the disaster over this world will create the possibility for the future of our people to find its way again to the rest of the world.

The task of this Tribunal is not to search for the political, economic and metaphysical reasons for this second World War, and not even to examine the flow of events in its <u>entirety,</u> but rather to determine whether and what part these defendants played in that which the victor nations made the object of these proceedings.

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Dr. No.
Closing Arguments

The task of the defense within the framework of their cooperation in finding the truth had to consist of examining which actual and legal points if any, could be stated in favor of the defendants. It should be said here that with all the cooperation on the part of the Tribunal shown the Defense in producing their evidence, the actual possiblity of bringing on defense material was extremly limited. Justice Jackson said in his basic prsecuting speech:

"The accuser and accused are obviously in an unequal situation." However, I should like to state that the Tribunal under the exemplary and objective guidance of its President facilitated the difficult task of the defense as far a possible. I am, at the same time, convinced that groups concerned with this trial were willing to submit to the Tribunal and the defense the obtainable material in its entirely.

In this connection I should like to direct the attention of the court to some objections which cannot be settled objectively for some reasons or others. These instances appear important to me not only for judging Keitel's case but beyond it,

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should be of certain interest for the hearing of evidence in itself.

At the meeting of January 30, 1946, the French Prosecution (Page 3553 of the German Protocol) submitted the document book F 668. It contains an excerpt of Admiral Darlan's note to the Ambassador Scapini, who represented the affairs of the French prisoners of war with the German Government.

The Tribunal knows that one of the gravest charges against Keitel lies in the field of the prisoners of war matters. I objected to the acceptance of this document as evidence for the following reasons:

"The Prosecutor drew the conclusion from this document that the statements contained therein were proven. I like to point out that it concerns an excerpt from the note of the Admiral to the French Ambassador Scapini; ergo that it does not appear from this document whether, the Ambassador Scapini made representations in that matter with the German government."

I requested therefore that the French Ambassador state whether he could ascertain from his files whether these grave accusations

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1) the German Government has been informed of the serious reproaches and

2) what did the German government reply to that."

I pointed out that the Defense is unable to submit this document in evidence owing to the fact that the document of the Armistice Commission is in the hands of the victor nations.

The President considered the objection well founded and instructed the French Prosecution:

> "To examine the question and to find out whether the matter had been taken up with the German Government and what was the German Government's reply to that, I mean not right away, but in the course of time."

The Prosecution has not informed me of the German Government's reply. I believe, I may draw the conclusion from this that the German Government's reply a the action the OKW may have taken, would lead to the clearing of that agency a of the defendant Keitel. In any event, Document 668 F must not be used by the Tribunal as a means of evidence in this connection. All the less as in the document, on page 5, reference is made to the copy of the note by the German Armistice Commission 178/41 of 20th January 1941, which enclosure, however, has not yet been introduced in evidence.

2) At the meeting on February 1, 1946 the French Prosecutor declared the following:

> "The fourth and last chapter will be headed thus:
>
> "The administrative-technical organization of the criminal acts."

As for the fourth chapter f.i. I can say that the French Delegation has examined over two thousand documents, whereby I consider only the German original documents,

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Dr. Ne.
Closing Arguments

of these about 50 documents had been retained."

There is no doubt that according to the fundamental declaration by the American Prosecutor, these 50 selected documents were chosen under the prosecution's point of view.

On the 11th of February, 1946 I approached the French Delegation with the request to let me view the one thousandninehundred and fifty documents not used by the French Prosecution. Up to now I am without a reply.

At the meeting of February 25, 1946 I stated in this matter: "You will comprehend the difficulties of my situation. I am aware that there are the documents; they most likely contain exonerating facts, etc. However, I cannot name them individually. Therefore, I ask the Tribunal to rule in this case that the Prosecution may let me have the documents it possesses for the purpose of looking through same."

The President replied:

"It is possible that some of the documents are no longer in the possession of the Prosecution, however, as to those that are still in its hands, would the Prosecution have any objections, if Dr. Nelte would see them?"

The French Prosecution has finally declared:

"I am ready, insofar as they are still in my hands, to submit them to the Defense."

In conclusion both Mr. Dubost and the President, said:

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Dubost: "I have no objection, and would like to say only that these documents have been rejected by the Tribunal."

President: "This, of course, does not refer to the documents that had been rejected by the Tribunal, we shall take that into consideration."

I wish to state that none of these documents have been placed at my disposal.

This complex of questions concerns the demonstration of evidence: "The administrative-technical organization of the criminal acts." Here, too, I must request that the Tribunal in reaching its verdict disregard as evidence those 50 documents which have been utilized by the Prosecution against the defendant Keitel, since for lack of the other remaining documents in the hands of the Prosecution the defense finds itself in a position unable to render the exoneratin evidence.

It was made public that almost the entire documentary material of the OKW had been seized.

No doubt, I am not mistaken in assuming that there are numerous documents among this vast material of documents which could serve as exonerating material for the defendants Keitel and Jodl in particular; this is in accord with the day by day experiences of life in conjunction with the impression these two defendants made here on the witness stand.

3.) The document governs the hearing of evidence before this Tribun in the background. The more essential it is that we examine Against that the witnesses remain/these documents to ascertain the possibility of their utilization and their Probative value.

The Prosecution has submitted as evidence to a large extent official reports which are admitted according to article 21 of the

Charter. I intended to show on hand of a number of these document that the value of such documents is only limited. But I shall lim myself to a few fundamental arguments in this connection trusting that you, Your Honors, in examining this kind of evidence will ta my statements into consideration. These numerous official reports submitted contain factual statements which to a great extent are based on witnesses' testimony. These testimonies are not always related in the form of protocols but as summarizing reports. I do not want to dispute that these testimonies of witnesses are mad as deposed in the reports. However, I will not do injustice to an of the witnesses who are not known by the Tribunal, whose testimo is hard to verify for lack of a personal impression, when I say t it concerns mostly very subjective attestations. There are a numb of documents in which this is clearly recognizable, in fact state and even such in which documents hatred finds its clear expression. I can understand the hatred of these hard hit people. The suffering the had to endure was so great that one cannot expect objectivity fro them. I may, however, say,too, that such personal feelings are no conducive to render the testimony of these sorely afflicted a suitable basis for finding the real truth. I am thinking of the formula of oath so often heard here on the part of witnesses:

"Swear that you will tell the truth
without hatred or fear, the whole truth, and
nothing but the truth."

Witness: "I swear."

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These official reports often contain not only factual statements, but final conclusions and judgments. Insofar, the probative value of these official reports cannot be recognized. At the present these judgments go so far, that outside the sphere of those directly involved, they level reproaches against agencies, i.e. the O.K.W. and Keitel, without it being possible to recognize from the document itself, on what the conclusion drawn rests. As long as it is a question of the indictment of an individual like the defendant Keitel, one must have recourse to documentary proof which yields concrete facts for responsibility, or which at least reveals causal coherence. Above all, it cannot suffice in order to consider Keitel's responsibility as proved, if in such reports crimes committed by soldiers and officers of the army or of the armed forces are alleged, and we derive responsibility on the part of the defendant, Keitel, from this fact alone, because he was the chief of staff of the OKW.

It must be added that in these reports, military agencies have often been erroneously misquoted and confused, as for example, when the defendant Keitel is spoken of as the "High Commander of the Wehrmacht", which is called "OKW" (High Command of the Armed Forces) instead of "O.K.H." (High Command of the Army), etc. It is not always possible to decide to what extent it is a question of an erroneous conception on the part of the prosecution or whether it comes from a translation which is not in accordance with the meaning.* I wish to make clear to the Tribunal in a manner which excludes any doubt, what were the channels of command and competence. And to this end, I have submitted two affidavits to the court:

*For the purpose of examining the responsibility of the defendant Keitel

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a) "The channels of command in the East" (Document book II K 10)

b) "The development of the situation in France 1940-1945 and the military authorities" (Document book II K 13)

The latter affidavit has also been signed by the co-defendant Jodl.

I will refer to these affidavits and make them the contents of my argument without reading from them.

Finally I would like to direct the attention of the Tribunal towards other circumstances, which may well impair the probative value of the documents which the prosecution has submitted and you have accepted. For example, when documents do not bear any signatures, and it is impossible to decide, whether it is a question of copies of Documents which have actually been issued. As an example I will refer to document 081 PS, which was submitted by the prosecution for Keitel's indictment during the question of the treatment of prisoners of war. As far as its contents are concerned it is an unheard of document. Keitel does not remember ever having seen this report and or ever having knowledge of the details contained in it. From all appearances one must consider this document as the draft of a report, which was not issued.

For

a) it bears neither a signature nor an initial as is usual in copies,

b) if this letter had been sent out, it would have a blank journal number,

c) the letter was not found at the addressee's.

In such cases, more knowledge of the addressee, in this case the defendant Keitel, and the consequent deduction of his guilt in omitting to take measures to change conditions, cannot be considered as proved.

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Dr. He.

Closing Argument.

Indictment of Field Marshal Keitel

According to the general statement of the offense, Field Marshal Keitel is indicted as follows:

"Between 1938 and 1945 the defendant Keitel was Chief of the High Command of the German Armed Forces, member of the Secret Cabinet Council, member of the Council of Ministers for the Defense of the Reich, and Field Marshal. The defendant Keitel used the foregoing positions, his personal influence and his intimate connections with the Fuehrer in order to promote the military preparations for war set forth in Count one of the indictment. He participated in the politic planning and preparation of the Nazi conspirators for wars of aggression and wars in violation of international treaties, agreements, and assurances as has be set forth in Counts one and two of the indictment; he took on fesponsibility for the execution of the plans and carried out the scheme of the Nazi-conspirations f wars of aggresseion and wars in violation of international treaties agreements, and assurances, as has been stated in Count IV of the indictment; he authorized and directed the war crimes against humanity set out in Counts three and four of the indictment and in particular the war crimes and crimes against humanity involved in the ill-treatment of prisoners of war and of the civilian population of occupied territories, and he participated in these crimes."

In the first general indictment the defendant Keitel was only indicted for the period from 1938 onwards. When this indictment

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f this was developed, in accordance with the special indictment deriving from the British trial brief; he was called to account as follows:

"The statement of his personal responsibility, outlined in appendix A of the indictment, establishes that between 1938 and 1945 he occupied various positions, and that he used these positions, together with his personal influence and close connections with the Fuehrer in order to perpetrate the actions set out in counts I, II, III and IV of the indictment. This statement will not include all the questions to which the indictment will refer. See the general statement at the beginning of indictment A. There is indeed an abundance of evidene to show that from 1933 on Keitel was an active member in the planning and preparation of the war of aggression and of violation of treaties etc.

Therefore - despite the limitation - in the statement of personal responsibility with regard to the period between 1938 to 1945 - Keitel's indictment will run to the effect that from 1933 on he was an active member of the conspiracy, and that he remained such until Germany's final defeat. And the Tribunal will be asked to confirm that the case is considered as being proved by the evidence produced."

Thus, Field Marshal Keitel's indictment, is divided, with respect to time and object, into two periods, the first one stretching from 1933 to the 4th February 1938, and the second from 4 February 1938 to the surrender.

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Dr. Ne.

Closing Arguments

A. The period from 1933 to 1938

The following counts of indictment are included in the first period:

1.) From 1933 on Field Marshal Keitel was an active member of the conspiracy.

2.) Field Marshal Keitel participated in Germany's secret rearmament in violation of the Treaty of Versailles and of other treaties.

3.) Field Marshal Keitel participated in the re-occupation and fortification of the Rhineland.

B. The period from 4 February 1938 to 1945.

I.)

1.) Participation in the planning of a war of aggression against Austria and Czechoslovakia,

as well as:

in the execution and planning of the invasion of Austria and Czechoslovakia.

2.) Participation in the planning of a war of aggression against Poland,

as well as:

in the execution of this plan.

3.) Participation in the planning of a war of aggression against Denmark, Norway, Belgium, the Netherlands, Luxembourg, Yugoslavia and Greece,

as well as:

the execution of this plan.

4.) Participation in the planning of a war of aggression against the USSR

as well as:

the execution of this plan.

II.)

Participation in the planning and execution of war crimes and crimes against humanity.

Herewith the defendant is not only indicted as a member of the conspiracy but is also accused of personally participating in all the crimes. This comprehensiv indictment is a result of the space which the prosecution has consacrated to the defendant in its statements. The name of no other defendant.

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has ever been mentioned so often by the prosecution, as that of the defendan Keitel. Again and again we hear the words "Keitel -order", "Keitel's decree" and just as often "order of the OKW", "directives of the OKW" etc. i connection with Keitel's name as "chief OKW" after 4 February 1938. From this derives the very substance of the indictment, namely, the position the defendant Keitel occupied after 4 February 1938. But from it also derives the scope of the justification. Here, it is not a question of examining to what extent the defendant participated in the individual facts of the case, which in the long run arose from the so-called "Keitel-orders" or "OKW instruction," but what matters is the position he occupied, whether he took part and what part he took in the planning and execution of those orders and instructions, and finally and most important of all, whether his part in it was causal and culpable in the sense of the law which is to be applied here. It seems of consequence, to stress from the several outset points of view, which are important for the treatment of the case and for its appreciation!

1.) The defendant has declared, that he admits the contents of the general indictment to be proved from the objective and factual point of view (that is to say not every individual case) and this in consideration of the law of procedure governing this trial. It would be senseless, despite the possibili of refuting several documents or individual facts, to attempt to shake the indictment as a whole. Therefore, I shall mainly confine myself to the questions concerning the subjective facts and the conspiracy and I will treat only those individual points which are of special importance as regards the personal participation of the defendant Keitel. The disproportion between the happenings and the defendant's present ddstiny is so crass, that the

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defendant Keitel, out of this consideration would have to wish tha such an attitude would expose him to the suspicion that he is fighting for his life, because he would have to fight at any rate out of moral constraint. But the defendant has already made it quite clear in his argumentation, that he is not fighting for his head but for his face.

II.)

The Defendant belongs to those men, who came into the public eye through Adolf Hitler's death. From 1938 onwards he was in his closest circle and was his almost permanent companion. It is clear what that means for this trial. It has often been alleged by the prosecution, that by referring to the deceased the defendants desired to unload their own responsibility upon them. If the purpo of this trial be to obtain the most faithful picture possible of events and connections, it is not fair to start out by discreditin any mention of the deceased, who -as the prosecution knows also- are the major culprits. This is especially true for the defendant Keitel, whose position, influence and actions cannot possibly be correctly judged without throwing a light upon the person of Adolf Hitler and upon his relationship with Keitel.

III.)

As can already be seen from Mr.Justice Jackson's speech of indictr we are dealing here with an indictment against the national-social system. Actually, the indictment is a global indictment against thi system, split into 21 individual indictments. The individual defendants are, to a certain extent mere symbolic figures of the spheres of authority of the state which was ruled by this system: the Party, Cabinet and Wehrmacht.

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If I understand Mr. Justice Jackson correctly, he goes even further; he says:

> "Above all personal forces are nameless and impersonal forces; their conflict with each other makes up much of humanity's history... What are the real forces which are battling here in front of you?"

This statement raises a problem which, Your Honors, cannot be left unmentioned at this trial, a problem which M. de Menthon also pointed out: The importance and influence of those forces which shape fate. Fate and guilt are two poles which do not exclude each other from their respective spheres; they are ranges which overlap so that there are spheres of life and spheres of effect in which the two forces are at work which make the world move. It can only be hinted at briefly here what forces are at work which shape fate, i.e. what forces cannot be considered as originating in the conscious will of the individual defendants a sense of national unity, historic events, opinions which are rooted in traditions and environment. Therefore, I will have to go into this background insofar as it is relevant to the defendant Keitel as a person and type of one of the groups under indictment because by this means only will you be given the possibility of obtaining a correct picture of the share which the defendant Keitel had in what happened.

4) I also want to state that everything I am going to say is said with the full agreement of the defendant Keitel and insofar as aspects and facts are stated which might exonerate the defendant Keitel, it should be taken as a contribution towards the clarification of what happened and as an answer to the question of how it could happen. He does not wish

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to have his position or the part which he played in this drama minimized, but he would like to prevent at the same time a distortion of the picture of his character. The defendant stated already on the witness stand that he was grateful for the opportunity this trial afforded him to give an account to the world public and the German people, of what he did and why he did it. He wishes to help to ascertain the historic truth of what happened.

I consider it my obligation to make known this opinion of the defendant Keitel because such an attitude, based on such reasons, made it considerably easier for me to conduct his defense. It was and is clear to the defendant Keitel: if one considers the horrible consequences and monstrous deeds which - without raising here the question of guilt - undoubtedly were committed by German people and which can indisputably be traced back causatively to orders and directives with which Keitel came into contact in some form, then one feels guilty without thinking about whether this is a guilt in the legal sense or the tragic feeling of being linked by fate with the causes and, thereby, also with the consequences

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The Planning on the Basis of the National-Socialist Program.

The prosecution has maintained:

"That at the date all the defendants had banded together with the Nazi - Party for a plan about which they, indeed, knew that it could be materialized only by the outbreak of a war in Europe."

With regard to the defendant Keitel, it is said that from 1933 on he took active part in this conspiracy.

To prove its thesis the prosecution stated:

a) that the National-Socialist program in itself, i.e. according to its wording and meaning could be materialized only by using force;

b) that the defendant Keitel recognized or should have recognized it;

c) that with this knowledge, he, together with others, especially with the co-defendants, planned and prepared aggressive wars.

As regards these statements I would like to call the Tribunal's attention, first of all, to the principal part of Mr. Justice Jackson's bill of indictment in which he deals with the program of the Party. (Pages 10 and 11.) He mentions there a number of points of the program of which points he says:

"Naturally, these were all aims which were legally unimpeachable."

At a different point he says:

"I do not criticize this policy, I wish it were generally recognized."

Naturally, this acknowledging criticism is subject to the one limitation:

"As long as these aims would be achieved without an aggressive war."

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According to that the prosecution itself does not presume that the wording and meaning of the Party program let the normal person recognize:

that these party-political aims c o u l d be materialized

by use of force o n l y.

I do not wish to repeat what, in this connection, was said by the individual defendants at their hearings in court; espp ecially convincing appeared to me what Dr. Schacht stated on this subject (page 8573 of the German transcript). He concludes his critical evaluation of the Party program with the words:

"That is essentially the contents of the National-Socialist Party

Program and I cannot find that something criminal lies in that."

I quote t h i s statement especially because it shows how this program and its recognizable objectives effected a person who may be characterized as intelligent, realistically thinking, free from emotional impulses in politics, of economic far-sightedness and of ability to judge.

If this personality did n o t recognize that the Party aims w e r e to be materialized by use of force - how was the soldier K e i t e l come to such a realization?

Keitel was an active officer. As such he could not be a member of the Party. The officers were prohibited from any political and party-political activity. The Wehrmacht command was intent on keeping the influence of Party politics away from the Wehrmacht. This was true both for the time b e f o r e 1933 and af f t e r w a r d s. Hitler himself confirmed this principle because he clearly recognized that the

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time was not yet ripe for giving the corps of officers, let alone the general officers, political character. According to tradition and interpretation of their profession, these higher officers had a "national attitude", as one used to say, and they welcomed the national points of the program which were put into the foreground by Hitler, they were glad about the cooperation of the Wehrmacht and without hesitation placed themselves behind the government led by Hitler when it proclaimed the fight against the Treaty of Versailles, especially against its military-political clauses. An agreement going beyond these aims or possibly a union with a political object in view did not exist. The generals, among them also Keitel, thought no different from millions of Germsn who were not Party members or who were opponents, but who regarded the national a i m s as self-evident.
Now, one cannot fail to see that it is something else if millions of Germans who have no influence, support t h a t part of the program relating to the national aims or the high general officers who led the Wehrmacht. Furthermore, it cannot be overlooked that the materialization of these national aims carried with it the danger of a war. But the state of things seems to me to be such that the generals did not see the danger of war in the f a c t that Hitler wanted to realize these national aims by an aggressive war, but they saw the danger rather in the fact that an assertion of these aims would bring about sanctions by the former enemy powers. The idea of an aggressive, warlike realization was far from the generals' minds for absolutely compelling reasons of military impotency. I shall

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later deal more in detail with this problem which is closely connected with the re-armament. Here is only important that the circles to which Keitel belonged

1) had no contact with the Party program.

2) had no relationship with Party circles,

3) sympathized with a part of the Party program because it corresponded to their national attitude,

4) did not think of materializing these national points by an aggressive war, because it would have been hopeless in military respect.

Now one could argue that although the generals themselves did not think of waging an aggressive war, they recognized or should have recognized that H i t l e r had the intention, if not n o w , but in the near future, of waging an aggressive war.

The prosecution believes to be able to presume that the defendant Keitel had this knowledge from 1933 on. The argument of the prosecution that this knowledge is the same as the knowledge of the National-Socialist program has been refuted; the same holds true of the knowledge of the book "Mein Kampf", even if one assumes he possessed the book.

Therefore, the question is only whether Keitel had knowledge of Hitler's intentions regarding an aggression for other reasons. For the period up to 1938 Keitel could not have obtained knowledge from Hitler himself, because Keitel spoke with him late in January 1938 for the first time.

The speeches which Hitler made before that time, just as those of the other Party leaders were unambiguously aimed at preserving peace. Looking back one may call it propagandistic camouflage of the opposite intentions.

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Would that be the case, then this camouflage successfully deceived not only many millions of Germans, but also the foreign countries which were partly critical and partly hostile toward National Socialism.

Keitel believed the protestations of peaceful intentions, saw their honesty confirmed also by official proposals of disarmament and treaties with England and Poland. He believed them the more so because, as has already been said, an aggressive war had to appear to him as an impossibility.

The co-defendant von N e u r a t h, too, declared f r e q u e n t l y that all his information and knowledge of Hitler's policy up to 5 November 1937 justified his firm conviction that Hitler did not want to realize his political aims by force or aggressive wars. It was only by the speech of 5 November 1937 that this conviction of von Neurath's was shaken.

In the arguments by Dr.Schacht's defense to which I referred, those facts were presented which show a contradiction between the former conduct of the victorious powers and the thesis which the prosecution upholds on this question.

By their official relations and b e y o n d then the victorious powers showed that, despite the knowledge of all circumstances the defendants are being accused of, which knowledge has to be assumed, they (the victorious Powers) did not believe in Hitler's intentions and / or did not recognize these intentions of realizing his aims by aggressive war.

The prosecution now accuses the defendant of having known or having had to know such intentions of Hitler. This does not appear to be convincing and I can leave it to the Tribunal which -if all possibilities are taking into consideration -had better possibilities to get information on Hitler's true intentions.

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I believe the defendant Keitel may claim for himself the same good faith and the same ignorance - u n l e s s this knowledge or even the Participation results from o t h e r circumstances.

Such cricumstances during the years 1933 through 1938 may have been: Keitel's activity in connection with the re-armament and in the Reich Defense Committee (Reichsverteidigungsausschuss).

The Rearmament.

The charge of illegal rearmament includes two facts which have been summed up by the prosecution:

1) The secret rearmament by eluding the treaty of Versailles,

2) The rearmament with the purpose of planning wars of agression.

For a judicial consideration however, these facts must be kept strictly apart; since they are different with respect to cause and effect they must also be evaluated legally from different points of view.

The time between 1933 and 1938 is a fateful period, a period of development and conversion. The forces of the hitherto existing order are struggling against the new powers which have not yet taken a definite shape. Everything is in fermentation. The aims remain obscure: they are camouflaged by the existing nationalistic tendencies which have been taken over. By clever propagandistic utilization of these tendencies the psychological basis for the aims pursued by the new lords is being created without being noticed by those concerned by it.

Here lies the problem of the Armed Forces leadership and of the defendant Keitel during this period, with which I am going to deal now.

The secret rearmament in violation of the Treaty of Versailles.

This problem cannot be solved without duly taking into consideration Germany's military position. In judging the then Colonel Keitel another consideration enters the picture: how the special sphere to which he belonged

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was affected by this situation. Keitel considered the Treaty of Versailles and especially the military clauses as a humiliation of Germany. He considered it a duty towards his country to collaborate in netting an end to this situation. He was convinced that the Treaty of Versailles, because of its impossibl military and territorial stipulations, would have to be revised some day. Such a revision appeared to him imperative in the interest of justice, as well as reason, if a lasting world-peace was to be preserved. On the basis of this conviction, he believed that as a German and a Soldier, he was entitled, in th official capacities in which he acted during this period, to interpret the military stipulations of the Versailles Treaty literally even if this was in contradiction with the purpose of a stipulation. He justified this before his own conscience by considering that the stipulations limited the possibilities of development in an unbearable manner, that is, in a manner completely insuff cient for an effective defense.

Without having actual interests, he did not consider it wrong for Germany unde the given circumstances to construct submarines in Finnland not for herself but with the purpose of gathering experience and training specialists; or to operate construction offices in Amsterdam in order to observe the progress achieved in the field of aeronautics and to make herself useful without actually building planes.

As symptom of the way democratic Germany of that time thought - without consideration of position and party - was Dr. Bruenings's statement, which on 15 February 1932

was broadcast over all USA radio stations on the occasion of the meeting of the disarmament conference. I am going to quote the following passages from that speech:

"The inner-political fights in Germany are very sharp in their outside forms to be sure; but this sharpness must not lead one to overlook the fact that despite many things which cause division there exist indisputably things of common possession, also. On the two decisive foreign-political questions of today, the questions of disarmament and reparations uniform opinions prevail among the German people. The demand for equal rights and equal security is shared by the entire German people. Any German cabinet will have to uphold these demands. The fact that the fight of the parties over the roads which our politics must travel is, perhaps, sharper in Germany today than in some other countries, is a result of the deep misery which presses heavily on Germany and is deeply upsetting the people's soul

In connection with this point I also refer to the testimony which the co-defendant von Neurath gave on 22 June 1946. These words which Bruening spoke, prove that there was a demand which was upheld by the entire people irrespective of the difference in parties: The demand for equal rights and equal security.

The objection to that is: A demand even if upheld by the entire people does not in itself create the right to violate or circumvent opposing contractual regulations.

In principle, one will accept that. However, things were not as simple as that. I do not wish to presume upon a "basic right" of all countries according to which every people must have the right of creating for itself a certain state of defense. But even if

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one does not want to recognize such a "basic right", one will, perhaps, understand the state of emergency which actually exists if a country is so limited in its military potential that it is not only liable to military attack by any neighbor, but also politically condemned to impotency.

In the course of the hearing of evidence the Tribunal had occasion to recognize that this was true with regard to the situation in which Germany was in 1933.

I want to call your attention to the following passages of the Marshall - report which was submitted to the Tribunal. The following passages written by this outstanding soldier who summarizes the experience of a patriotic and military life as regards the point discussed here under the title "Re-armament", as follows:

"Nature is inclined to pass over weak people. The law that only the strong survive, is generally recognized....."

"The world does not take serious the wishes of the weak. Weakness is too great a temptation for the strong."

"Above all, it seems to me, we must correct the tragic misunderstanding that a policy directed at security is a war policy."

The best witness with regard to this question which is so important for the defendant Keitel, is the book by the English Major General A.C. Temperley (Collins Publishers 1938) "The Whispering Gallery of Europe" for which the English Foreign Secretary of the second world war, Anthony Eden, has written a very friendly, agreeing preface; it carries particular weight because Temperley reports and judges retrospectively from the year of 1938.

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The statements made by Temperley who witnessed the armament conference, the official negotiations and the negotiations behind the scenes, are deeply moving because they reveal the tragic - I must use this word here, too, - fateful and primary conflict: fateful because the theses presented by the representatives of the individual countries - which stemmed from the national, given conditions and from traditionally bound conceptions - proved that they could not be bridged and thus became the origin of the confusion the last consequences of which we just experienced.

Temperley says:

1)

(Page 50) "The French had studied the question of disarmament much more thoroughly than any other nation and some of their best brains of the general staff and admiral staff had examined the problem for months...

In order to characterize their problem roughly, it was their goal to disarm themselves as little as possible although they were the strongest power of the world, but at the same time to keep Germany in the status of disarmament down to the minutest detail according to the conditions of the peace treaty. ....."

(Page 71) "In the report which I gave, I spare neither the French nor us. We had made big mistakes, but at that time I came to recognize that in reality the French never thought of disarming at all.... M. Paul Boncour certainly was honest and worked intensively in order to

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achieve success, but the pressure of the French general staff upon the government was too great....."

2)

(Page 126): "Mr. Stresemann knew his people best. It was a race against time. How long could he keep his people in the atmosphere of cooperative giving in without any tangible success in the form of concessions on the part of the Allies? Should the Allied governments have given faster and more willingly what they were ready to give? Would this gesture have prevented the catastrophy? .... Without a question, history will give the answer. I do not know what kind of answer it is going to be, but it seems certain to me that the most important period when Germany turned away from the road of peace, is to be found in the period of co-operation between 1929 and 1930 ..... Would a more unhesitati policy as regards canceling the debts, the economic reconstruction and concessions in the treaties have prevented Hitlerdom and all its consequences? Who knows? .... In his Review of International Affairs, 1930, Professor Arnold Toynbee writes: ..... For the foreign observer who visited Germany at that time, it was a terrible and strange drama to see a whole nation - one of the greatest and most civilized nations of the world - in an heroic battle against fate, half paralyzed already, in a titanic battle, driven by the conviction that its steps had already irresistibly

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been led upon the path of destruction."

(Pages 128 and 129) "The German people had lost hope.... The French had always stated that Germany would maintain a pretext of modesty as long as the Rhineland was occupied and when the occupation ceased the true color would be shown .... This has proved to be a good prediction, but it was rather a concurrence of circumstances and the expression of a people taking its last gasp than premeditated planning...."

3)

(Page 151) "I was present at the session and was moved strongly in the face of the attitude of the French delegation and that of the Little Entente. They believed that they now had Germany financially by her throat and that her complete ruin was only a question of weeks. Our Foreign Office recognized the situation. But after a discussion with Henderson I ask myself whether he really recognized the abyss which was gaping before us....."

4)

(Page 165) "I also name the general staffs because there is no greater illusion than that they (the general staffs), taken as a whole, are in favor of war. I know the general staffs of many countries very well and have never known any general staff which would have glorified war or would have wished for war. They knew too much about it. If they advocated strength, it was because they believed in the idea that armed

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strength can prevent war. In opposition to the blood-thirsty pacifists who reject modern weapons, but who immediately wish for their appearance on the battle field if one must resist attackers... This leads to the conclusion that armaments are not the main reason for wars. The history of the years 1926 to 1931 is not that of a race for re-armament, but that of a slowly developing deterioration of the international situation because of the economic and political chaos which on its part made disarmement impossible and re-armament unavoidable....."

(Page 222) "The Germans actually repeated their successful tactics in circumventing treaties, namely the tactics they had used in Napoleon's time. And yet, one wondered which other honest-minded nation in the same circumstances would not also have done its utmost to circumvent a treaty which had been forced upon it at the point of a bayonet ....."

(Page 232) "The following six months brought Germany's return, Hoover's failure and the failure / of the French plans and the complete change in the atmosphere through Hitler's seizure of power. However dreadful this was for the peace of the world - other powers, above all France, can only blame themselves for it (Hitler's seizure of power)..... We should have exerted more pressure upon the French and made greater efforts to keep a moderate government in office in Germany

(Page 256) " .....they felt they were still treated as out-
laws....."

I would like to adk that these opinions of the English General which, as I already said, had the approval of the then Foreign Secretary Anthony Eden, be taken into consideration.

In this connection I want to refer also to the statements by by following statesmen: Paul Boncour, Henderson, Briand and Cecil; these statements were submitted by Dr. Schacht's defense (Document book Dr. Schacht No. 3, Schacht Exhibit No. 12) on the same subject matter and were accepted by the Tribunal; I also want to refer to the book by Viscount Rothermere: "Warnings and Predictions" (Page 100).

In examining and deciding whether the defendant Keitel guiltily violated the military clauses of the Treaty of Versailles in the meaning of the indictment the Tribunal will have to consider the facts which have been presented. Any individual charges on this point have not been made.

It is unquestionable that from 1933 on rearmament took place in the Reich. The defendant Keitel has admitted that and he stated that in the official positions he held up to 30 September 1934 and from 1 October 1935 on he participated in this rearmament in accordande with the functions incumbent on him. Like everything the Germans do, the rearmament, too, was well conceived organized. The prosecution collected datas for that: Especially Document No. 2353 PS and the transcripts of the sessions of the Reich Defense Committ (Reichsverteidigungsausschuss).

During the judicial collecting of evidence the total picture of this period from 1933 to 1938 was not clearly defined. The prosecution

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arranged its presentation of evidence retrospectively and drew a conclusion from the results of the war to the motive of the rearmament, but at the same time it deduced from the fact which cannot be denied and has not been denied, namely that this rearmament could not be planned and carried out by one man, that it (the rearmament) constituted a joint plot for the purpose of aggressive wars.

Where is the decisive criterion in military armaments or in preparations of a different kind for the case of war from which the conclusion may be drawn that these measures have aggressive character, i.e. are aimed at aggressive war?

In principle from the armament itself nothing can be deduced for the charged intentions; it (the armament) may, in fact it must look just the same if it is carried out for security and defense as it does in case of aggressive war.

Therefore, if the intention of rearmament for the purpose of a plot is to be determined, distinction must be made between:

a) Armament and preparations of measures which must be taken for the case of a mobilization becoming necessary, in order to be ready for defense at any time,

b) Rearmament and ordering of measures which exceed quantitatively - or qualitatively the volume under a) to such a considerable degree that from that fact the intention of the political leadership to begin a war will become noticeable to the party concerned, in which case the political question of whether an aggressive, defensive or preventive war is intended, may be disregarded.

Therefore, in the last analysis, the decisive question will be whether in connection with these measures the intention of the planning for an aggressive war was expressed or had become noticeable by other means or whether the measures because of their nature

and volume demand the conclusive deduction that an aggressive war was prepared here.

In retrospect the events are presented as the logical chain of a development according to plan. In reality, not only were Hitler's far-aiming intention and his planning imputed to an actual happening in which, objectively viewed, a certain causality seems to be inherent, but also the knowledge and approving support of co- operating circles were imputed to it. There can be no dispute over the statement that the economic capacity of a country, which in its totality must be regarded as armament for the case of war, will eventually get to a point which must be considered of decisive importance for solving the question of when the rearmament, i.e. the status of the entire industry essential for war, exceeds the capacity of armament for defense.

In making these considerations it has to be taken into account especially for the defendant Keitel as a soldier that until he took over the office of chief of OKW on 4 February 1938 he had not held a decisive position.

Now, what part did the defendant Keitel play at that date?

a) In the field of rearmament with regard to materiel and personnel,

b) in the field of administrative and -as charged by the prosecution- military-political rearmament which was dealt with under the heading of "Reichsverteidigungsrat" (Reich Defense Council).

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Mobilization of material and personnel.

When on October 1st 1935 the defendant Keitel became the Chief of the High Command of the German armed forces in the Reich Ministry of von Blomberg, there was a military economy branch headed by Colonel Thomas. He was appointed by von Blomberg as an expert adviser for the organization.

This "Military Economy Branch", later called the "Military Economy Staff" as a ministerial service post had to represent the Reich Minister of War at the competent and authoritative economy posts, later also at the Plenipotentiary General for the Economy (GB), created in 1935. The Minister of War v.Blomberg generally communicated directly with Thomas at the time when Fieldmarshal Keitel was Chief of the High Command.

To clarify the part Keitel had in the organizational development of rearmament in this period, I will state the following:

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The historical development.

I.) The position at the start in 1933 (for the period 1933-1938) was as follows:

Lack of any kind of basis for production, as a consequence of the destruction of the armament industry, following on the Treaty of Versailles.

Consequence:

no capacity for production,
no motor park,
no offices for construction,
no experience.

Thus, the first stage for rearmament:

the restoration of a basis for production.
Equipment and reconversion of factories.

II.) Basic factors for the start to procure armaments:

a) Branches of the Armed Forces through their ordonance offices as purchasing agents issuing orders to firms, were handicapped by budget means and their incorporation in the budget year.

Consequence:

The subsidizing of firms for lack of long term orders and through the impossibility of calculation.

b) War Economy Office in the OKW as the central organizer and representative of the powers of production (firms) through War-Economy- (later Armament)- inspections as an office of territorial middle instance in the military area to serve the Branches of the Armed Forces as their executive.

Duties of the organization (with military staff):

1.) To gain information about and recommand firms to the military branches
2.) To adjust the orders of the military branches to the capacity.
3.) To provide for the allotment of raw materials, machinery and man power
4.) To further the extension and capacity of industrial plants.
5.) To protect the plants from bad investments, air raids, espionage, etc.

c) The plenipotentiary general for Economy "GBW" from 1935 (Autumn):

as the declared organizer of the entire German economy for its stepping in in case of war and for its leadership during a war.

Duties in peace time (preparatory only):

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1. Statistical coordination of the individual industrial and economy branches (armament authorities in connection with OKW and War Economy office under Thomas)
2. Provision and storing of raw materials, obtainable by importation only.
3. Procurement of foreign currencies for the importation.
4. Financing of the rearmament at home.
5. Planning of the reconversion of the entire economy to war needs, and extension of the special armament industry.
6. Duties as mentioned already under IIb) 3 & 4, together with War Economy office in the OKW.

In addition to this, but planned and to take effect only in case of mobilization, there were added the following subordinate ministries:

a) Ministry of Economy,

b) Ministry of Food,

c) Ministry of Labor,

d) Ministry of Finance (Foreign Exchange, Purchase of raw materials)

e) Ministry of Forestry.

This necessitated, from December 1935 onwards, the participation of a GBW deputy for purposes of information in the Reich Defense Commission.

After Dr. Schacht's retirement from the Reich Ministry of Economics, the GBW was only a fiction, because the full powers had been transferred to the Four Year Plan (Goering).

Only when the powers of the Ministry of "Armament and Munitions" were extended in August 1943 and it became the Ministry for "Re-armament and War Production" was there any approach again to the originally planned position of GBW with full power in time of war, but subordinate as regards organization to the 4 Years Plan, and in reality with the Fuehrer as the general authority at the top (because of the failure of the 4 years Plan).

III.) Through the collaboration of the GBW and the War Economy Office in the OKW.

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the "Mobilization-Plan-Rearmament" had been set up under the pen-leadership of General Thomas. This "Mobilization-Plan Rearmament" acted on behalf of the Wehrmacht and the GBW that supplied particulars of the industrial plants to be released by it from the general production for reconversion to armament production in time of war. It was supposed to register:

a) work requirements

b) raw material requirements and

c) industrial equipment (special machinery for weapons etc.)

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The Justification

The prerequisite of modern warfare is not so much the exploitation and organization of the manpower of a country into military formations, but it is essentially a problem of industria capacity and of its appropriate utilization for the production of all necessary raw materials.

This process must of necessity precede any rearmament and requires expenditure of money and even more of time.(Establishmen of industrial equipment stocks.)

When Germany proclaimed its equal rights as regards its need for national defense, -that is, the supreme importance of its defense- it did not have the means to help its material rearmamen as they had been taken away on recognition and execution of the disarmament plan. It has been confirmed here during the trial on different hands that first 10, then 7-8 years were reckoned on an foreseen in order to give material equipment in the hitherto prohibited modern weapons and supplies, especially munitions, to the peace time Wehrmacht which had been disclosed to the world with the proclamation of freedom in national defense in 1935. Thi becomes comprehensible if one considers that even the USA with it unlimited means, which were not impaired by the effects of war, required 4 to 5 years for the necessary conversion and rearmament in this war. It results from this that rearmament, if it is inten to exceed the limits of defensive armament, is only to be achie ed gradually, in the case of nations, which -like Germany in 1934 have no armaments.

1st stage: Creation of the prerequisites with regard to industrie and raw materials (capacities) for the production of the war supplies.

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2nd stage: Delivering of orders to the armament industry for the first equipment of the peace-time strength of the Wehrmacht and execution of these procurement orders within the framework of the means provided by the annual budgets.

3rd stage: Procurement of the ammunition and weapon supplies to be stored for the equipment of a mobile Wehrmacht, which is to be developed in the case of war from the permanent-peace time strength in accordance with the efficiency in manpower of a nation. These supplies are to include the necessary replacements during the war.

If one considers that in 1934 Germany had no modern weapons, no submarines and no military aircraft at its disposal, it can well be believed that any soldier of judgment had to assume that under the given circumstances there could be no thought of a war, let alone a war of aggression.

Accordingly, the tasks which the defendant Keitel assumed in his official capacity of chief of staff of the Wehrmacht bureau, must be considered as purely preparatory and organizational. Keitel is of course responsible for General Thomas, chief of the defense economy staff. The technical details and th extent of his activity can be seen from document PS 2353, which is correct in essence despite the fact that Thomas, in the declaration prefixed to this historical document, now wants it to look as if he had altered his original notes and given them a more favourable turn to please Hitler, this in case of the arrest he apprehended. This does not correspond to the facts. What Thomas wrote, proves according to defendant Keitel's opinion, that a "war armament" with mobilization of the industrial capacity and its conversion toward war economy began only at the beginning of October 1939. It further proves, that the statements of the defendants which were examined here, as far as they were connected with this rearmament,

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and especially Dr. Schacht until 1937, are incomplete agreement on the following point: that it cannot be admitted that in this period wars of aggression were desired and according to the momentary state of armament they must have appeared impossible.

But the rearmament in man-power also shows the same picture during this period. The evidence has demonstrated that until spring 1938 only 27 peace time divisions were poorly equipped and that 10 to 12 reserve divisions were in preparation; at that time the Wehrmacht had no other supplies nor armaments at its disposal. If, despite this fact, and without general mobilization it succeeded by the fall of 1938 in preparing an army of almost 40 divisions for the aggression against Czechoslovakia, when at that time it had the poorest protection on its western front one can see what was the maximum war potential in these days.

Under such, circumstances and in knowledge of the armament situation and war potentials of neighboring countries, which were mutually united by alliances and assistance pacts, none of the generals of the old school could ever think of occasioning a war. The fact, that already one year later, in 1939, the state of German armaments was substantially improved, must primarily be traced back to the occupation of Czechoslovakia.

Finally it must be pointed out, that during this period there was no strategic plan for any aggression whatsoever. General Jodl has declared on the witness stand, that when in 1935 he came to the Wehrmacht bureau, no plan nor anything similar

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was in existence, except what was foreseen in the case of internal unrest. The occupation of the de-militarized Rhineland zone was not planned, but was improvized by Hitler.

The "Initial Assembly and Combat Directives of June 1937" is a general instruction for eventual and possible military conflicts.

For the sake of completeness I must also call attention to document EC 194. This is an order issued by the supreme commander of the Wehrmacht, v. Blomberg, on the subject of aerial reconnaissance and the observation of submarines movements during the occupation of the Rhine Keitel signed and forwarded this order.

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The Reich Defense Council

The Reichswehr had a permanent force of 100 000 men, as had been established by the treaty of Versailles. It is indisputable, that in view of the size of the Reich, its unprotected borders and the way East-Prussia was cut off, this figure was absolutely inadequate for creating a feeling of internal security and the possibility of defense in the face of an attack from the outside world, such as may be considered for any country and nation an elementary right. This state of insufficiency which had been provoked by the military clauses of the treaty of Versailles, was discussed before 1933 already with a view to improving it without using the actual soldiers for it. An examination was made and it was found that in case of a mobilization a series of tasks could be taken over by the civil ministries. Hereby, it was a question of tasks of a purely defensive nature, which cannot in any way be considered aggressive, they were tasks of national defense, and principally the following:

1. Protection of the frontiers by reinforcement of the customs-service.
2. Postal security by Reich post agencies (Repeater Offices),
3. Railroad protection by Reichbahn personnel,
4. Laying of cables instead of overhead telegraph lines,
5. Construction of railroad viaducts and elimination of grade crossings on important traffic roads.
6. Construction of frontier fortifications in the east, Oder-Warthe line, Pommeranian line, Oder line (Terrain expropriation),
7. Improvement of the maritime traffic with East-Prussian and of the railroad transit through the corridor,
8. Fortifications in East-Prussia,
9. Reinforcement of the frontier protection in East-Prussia,
10. Preparation by the Reichsbahn of mobile loading ramps,
11. Reinforcement of the "Coastal" customs service.
12. Development by the Reichpost of the radio network (amplified transmitters and receivers)

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13. Manning of permanent army signal stations with post office personnel.

14. Relieving the Reichswehr from the charge of detaching soldiers for duties which can be carried out by civilian personnel.

15. Protection of the frontier passages by the local authorities (Landräte)

16. Coordination of motor vehicles etc.

The advisory body for these tasks and their execution was, up to 1933, the committee of advisors. (Referentenausschuss) It consisted of advisors coming from the different civil ministries, who after being recognized by the ministry of the interior (Severing up to t. end of 1935) met for conferences at the Reich ministry. The Reichswehr minister charged the then colonel Keitel to direct these meetings. At the latter the advisors received and discussed the desires of the Reich ministry as regards the afore-mentioned tasks, which the individual ministers could take over in case of a mobilization.

During Minister Severing's time this cooperation worked without friction in order to satisfy as for as possible the wishes of the Reichswehr minister, and it went on in the same way after 30 Januar 1933. The scope of the tasks and the composition remained the same. When on 4 April 1933, a Reich Defense Council was established throu a resolution of Hitler's new Reich government, the committee was maintained, it changed only its designation: the committee of advis became the Reich Defense Committee, it did not change its field of action and was not charged with any new competency. It only grew in size as it went on developing, especially after the introduction of general military service. Now as before, the Reich Defense Committee was a body, which had to give advice in questions of national defense

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concerning the civilian sector and which had to be prepared and also partly taken over by the civil ministries. For this count of the indictment it must be made quite clear, that after 4 April 1933 Keitel's position did not change either, and especially that he did not become a member of the Reich Defense Council.

The Reich Defense Council, which has taken up a lot of room in the statements of the prosecution, may be considered as factually non-existent according to the result of the evidence produced - later on I will come back to the time after 1938 - in any case, the prosecution could not prove that there was any session of the Reich Defense Council during this period. The protocols submitted dealt without exception with the sessions of the Reich Defense Committ and the members of this committee reported to their competent ministries, whic in turn, had the opportunity to give, in the framework of the cabinet, the necessary concrete form to the suggestions and proposals discussed in the Reich Defense Committee. For this reason there were never any sessions of the formal/legally existing Reich Defense Council, so that witnesses could rightly say that the Reich Defense Council existed only on paper.

Up to 30 September 1933, as colonel and section chief in the War ministry, and later, from October 1935, as brigadier general (Chief in the Wehrmacht bureau of the Reich war minister), Keitel was a member of the Reich Defense Committee.

Therefore, from 30 September 1933 to 30 September 1935 he was not at the war ministry, and thus had no function connected with this count of the indictment during

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this time also he did not participate in sessions of the Reich Defense Council, the protocols of which have been presented by the prosecution as having a specially probative value.

The session of 22 May 1933, denoted as the 2nd session of the working committee of advisors (Referenten), was the last session in which Keitel participated before being transferred to duty with the troops. The first sesseion after his transfer to the Reich War Ministry was held on 6 December 1935; it is put down as the 11th session of the Reich Defense Committee. And, therefore, in the examination of Keitel's responsibility, although one has to exclude the above protocols (Doc. E.C. 404 and E.C. 405)as well as the work done in general by the Reich Defense Committee during the two years of sessions 3 to 10, I will nevertheless make them the subject of my statements, as it is from these protocols that one can see what the Reich Defense Committee was doing.

Only the knowledge of these protocols makes it clear, why the creation of an institution, which exists in this or some other form in every country , and which serves the purpose of national defense deemed legitimate by every country has now been presented as an important argument in the evidence given of plans and preparations in view of aggression.

The protocols of the sessions of the Reich Defense Committee in 1933, and 1935, reveal the character of the work as that of preparations for the event of war. But it is likewise evident, that it is a question of preparations which were intended to bring about a more perfect degree of readiness in national defense in case of mobilization

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If the "Political situation" is mentioned twice, these allusio point to the fear in neighbouring states of military sanctions. Reference is made to the case of Abyssinia, which led to sanctions against Italy)

Everything is rooted in the thought of overcoming that state o military impotency, which made it impossible to secure the open frontiers of the Reich.

The ever-returning necessity for secrecy can only be considere as fear deriving from the situation at the time that the publishin of measures, though of a defensive nature, would produce preventive measures on the part of the victorious powers (Italy).

That these suspicions were well grounded is shown by the intransigent attitude of certain states after the complete disarmament of Germany.

This question is important for Keitel's attitude, for he affir that the conclusion drawn from the prescribed secrecy was erroneous and that the secrecy was a proof of a bad conscience, and the bad conscience a proof of knowledge of illegality.

The Committee of the Reich Defense never insisted that it was an advisory body in matters of national defense insofar as the civilia sector was concerned by a mobilization. At no time did it ever indulge in discussions concerning rearmament as regards manpower or material o concerning plans of aggression.

The prosecuting authorities have tried in one instance to show proof that the Committee of Reich Defense

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was contemplating plans for aggression. They pointed out document E.C. 405, the protocol of the Committee for Reich Defense, session of 26 June 1934, in which there is a question of "participation in preparing mobilization." In this protocol under c) can be found:

"Preparations for the liberation of the Rhine"

From this the prosecuting authorities have drawn the conclusion, that already on 26 June 1934 the Reich Defense Committee was contemplating the "liberation of the Rhine". The witness Mi. Goering has stated during his hearing that given the unequivocal wording of the German text it is a question here of the technical liberation of the river Rhine, but not of any strategic or political matter. I am mentioning this manifest error of the prosecuting authorities which can only have occured through a gross mistake in translation, because it has led to an erroneous conception of the prosecution as to the competence of the Reich Defense Committee and because it is the only case which has come up in connexion with this complex. The true nature of the Committee's activities is set out quite simply and clearly in the "Book of mobilization for the civilian administration." (Documents 1639-PS and 1639a-PS). It refers to the result of discussions between all the members of the Reich Defense Committee and is an appendix to the mobilization plan of the Wehrmacht as well as to that of armaments.

These three mobilization plans taken all together form the basis of your decision. You may see from them whether the prosecution is right in its supposition of a total planning of aggressive wars - or whether

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The defendant Keitel was right when he stated during his hearing: "What has been discussed and planned here is what every country is entitled to do and what the responsible agencies are bound to do, if they do not wish to violate their most sacred duty, namely the safeguarding of the security of their land"

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The decision of 4 February 1938 was fateful for General Keitel as well as for the German Wehrmacht:

For Keitel who could not yet form an opinion of the newly-created office of the "Supreme commander of the Wehrmacht" with the high sounding name.

For the Wehrmacht, which lost on that day its (relative) independence. Hitler broke down the last barriers between himself and the Wehrmacht -the nation in arms- by removing both the Commander in Chief of the Wehrmacht and the constitutionally responsible Reich minister of War. This truly portentuous decision became fatal for Keitel and the German nation, though at the time of its occurrence this was not realized by the participants. That they may be blamed for not realizing it, it is easy to say now in retrospect. At the time everybody who was not an inveterate sceptic or pessimist, had to base his judgement on the development of things in general and on the strength of the personalities involved. Neither the one nor the other could be clearly seen on 4 February 1938.

For the defendant Keitel, who did not know Hitler personally in those days and who met him for the first time as man to man in the preliminary discussions, the decision was none of his own. Hitler assigned him to the newly created office of Supreme Commander of the Wehrmacht and Keitel accepted it. Even if we disregard entirely the human emotions connected with such a seemingly brilliant promotion, there was no reasonable ground for the Chief of the Wehrmacht office in the Reich Ministry of War (RKM) to decline the offer, since von Blomberg himself had proposed him. The way Hitler considered this office could not be discerned by Keitel. The decree gave Keitel a wonderfully impressive office name as "Chief of the Supreme Command of the Wehrmacht". The historical foundation is the elimination of the commanding authority over

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the entire Wehrmacht, which up to 4 February 1938 was in the hands of Fieldmarshal von Blomberg and on that day was taken over by Hitler himself. Hitler created at the same time the responsible Ministry of War, which up to that time had also been administrated by Fieldmarshal von Blomberg.

Dr. Lammers says the following about the origin of the Fuehrer's decree of 4 February 1938:

(Protocol of 8 April 1946, page 7352 of the German edition.)

"The Fuehrer informed me that the Reich Minister of War von Blomberg is resigning his office and that he tkes this opportunity of making some other changes in the Reich government, particularly since the Foreign Minister von Neurath is going to retire which will make a change and since there is t a change also in the High Command of the Army. In this connection the Fuehrer gave orders for a decree to be worked out regarding the leadership of the Wehrmacht. It was to collaborate thereby in conjunction with the Wehrmacht-Ministry of War. As directive the Fuehrer gave me the following instruction: In the future I shall not have any Minister of War neither will I have in the future a Supreme Commander of the Wehrmacht, to stand between me, the highest commander, and the other high commanders of the Wehrmacht."

In accordance with this instruction the decree was formulated, by which the High Command of the Wehrmacht was established as an Army Staff, directly subordinate to the Command of the Fuehrer. The Fuehrer did not want any independent

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office, in this position, inserted between himself and the commanding officers of the Wehrmacht sections. In consequence, general of the Artiller Keitel, now appointed as Chief of the High Command of the Wehrmacht had no commanding authority of his own over the different sections of the Wehr Such an authority would not have come into consideration either from any other grounds."

Field Marshal von Blomberg declares in the affidavit I have submitted:

To question 24: At our last discussion Hitler pointed out that he presumab would not fill my position again, and that he would thereby become himself the rea Supreme Commander of the German Army. He asked for a suggestion for the assignment of a "Chef du Bureau", who would direct and carry out current affairs under him and thus under Hitler's responsiblity. I named Keitel, who, under me, had carried out this office very well.

To question 27: I proposed Keitel as "Chef du Bureau", believing that I had put him on the right job. In such a position he would not be a military adviser to Hitler. Whether or how far Hitler for his advice, I do not know. Even if it were so, Keitel's responsiblity in my opinion, would not be established by that.

To question 29: (Question: Was it not Hitler's intention to create a tool for himself in the person of Keitel, whose capacity for organization and hard work seemed to him valuable, as an executive organ for his decisions and command?

Answer: "This question is emphatically confirmed by me, insofar as on the afternoon of the dismissal Hitler asked for

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a suggestion and I made it. Hitler's original intention at that time was most certainly to have at his disposal a trustworthy subordinate organ and in no way an adviser, who claimed some responsibility."

The decree of 4 February 1938 regarding leadership in the Wehrmacht is known to the Tribunal, so I do not have to read it to you. It results therefrom for the position of the defendant Keitel and the questions of his competence and responsibility as well as from the hearing of witnesses (statements of Goering and the Chief of the Reich Chancellery, Reich Minister Dr. Lammers, and affidavits of Grand Admirals Doenitz and Raeder) that:

1) Hitler did not want either a responsible minister of war, or any other perso but himself to exercise the commanding authority over the entire Wehrmacht. He united in his own person both of these institutions by declaring that in regard to the commanding authority he would from now on exercise it directly and personally as well as the functions of the Reich Minister of War, which were to be administrated by Keitel under his instructions.

2) Hitler also created a military Staff as advisory council in military technic matters. He designated it as the High Command of the Wehrmacht. It was nothing more than the military chancellery of the Fuehrer and Highest Commander. Such chancelleries were already existing as Reich Chancellery, the Office of the President Chancellery/and Party Chancellery. The defendant Keitel was assigned to the the post of Chief of the military chancellery with the title Chief of Staff of the High Command of the Wehrmacht (named for short: Chief OKW).

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3.) Hence it follows that the OKW was not intended to be an intermediary agency between the supreme commander of the Wehrmacht and the three Wehrmacht sections. The contrary assumption of the prosecution, which is connected with a graphic representation, is found upon an erroneous judgment. An intermediary level between the supreme commander and the three high commanders of the Army, Navy and Air Force as existed before the 4 February 1938, with rights its own, no longer existed now. The OKW, in which the defendant Keitel was the Chief of Staff, was no independent military agency or authority, but exclusively Hitler's military-technical staff a his war ministry office. The OKW had no independant authority whatsoever, neither the power to issue orders nor the military author Therefore ,the OKW could not issue its own orders. All instruction decrees, general directions or orders issued by the OKW were rath the expression of the desires of the supreme commander of the Wehrmacht. The commanders-in-chief of the three Wehrmacht branches we always aware of the fact that no intermediary level existed betwe them and the supreme commander. They never considered or recogni the OKW as such. This is confirmed by the affidavits of the co-defendants Grand Admirals Doenitz and Raeder as well as by the testi of Reich Marshal Goering and Dr.Lammers. It is an entirely erro conception that the OKW or in this case the defendant Keitel as c of the OKW, would have had the authority to issue instructions or orders on his own. Every official business relation, oral or i writing, which went beyond an exchange of ideas with other milita agencies or authorities was subject to the exclusive decision of supreme commander himself.

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The OKW was merely the executive staff of the Supreme command

4) Therefore, when documents issued by the Supreme Commander o by the OKW show signatures or initials of the defendant Keitel (or those of a division chief or a section chief, in the OKW), one can derive therefrom the conclusion that an own, independent authority issuing orders existed. In each instance it was a case of taking notice of, forwarding or transmitting the orders of the Supreme Commander himself. Because of the heavy claims on Hitler's time in his positions as Chief of State, Reich Chancellor, Party Leader an Supreme Commander of the Wehrmacht it was impossible to obtain alw the personal signature, unless it concerned matters of particular importance or fundamental significance. It has to be noted that in all cases Hitler's personal decision or approval had to be obtaine

If in this state of affairs, the prosecution advocates the conception that because of the signing of documents or because of existence of initials the defendant Keitel is co-responsible for t factual contents of the documents, this cannot be accepted. It woul be going by the letter of the law to derive the responsibility of the defendant Keitel as chief of the military chancellery from his forwarding or signing of orders, instructions and such, a responsibility which, in my opinion, can be laid only upon that person wh issues or brings about the order by virtue of his authority.

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A real responsibility for this could be laid upon the defendant Keitel only in case it would be proven that he willfully and causally participated in deciding these orders, instructions, etc.

5) In order to clarify as much as possible this question which is so decisive for the defendant Keitel I would like furthermore to point out the following:

The instructions which were of fundamental significance for the planning of military operations, are operational orders issued to the Commanders-in-Chief of the three Wehrmacht branches by the Supreme Commander in this capacity of h Before these instructions were composed Hitler discussed with the competent OKW officers, also with the defendant Keitel, the military-technical aspect of the order. The instructions, without considering the opinions manifested by the individual officers, were exclusively the expression of the Supreme Commander's wishes.

They were not intendédd for the OKW but for the Commanders-in-Chief of the three Wehrmacht branches to whom they were forwarded through the OKW. There upon the three Wehrmacht branches for their part ordered, on the basis of the general instructions, the details for the carrying out of what the instructions stipulated. Therefore I shall not refer in this connection to the statement of the Charter according to which the carrying out of orders is not accepted as a legal ground for exclusion, because the transmission of the order was not an order issued by the OKW to the Wehrmacht branches but the forwarding of the expression of the wishes of the Supreme Commander of the Wehrmacht. The order directed to the OKW, if one wants to express it that way, referred in all cases to the elaboration upon some desire expressed by the Supreme Commander and to the purely external act of transmitting the ready-made decision without having the authority of expressing an opinion on this decision.

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6. It must be assumed that the prosecution, perhaps influenced by the defendant's rank of Field Marshal, did not recognize correctly this position of the defendant Keitel. This rank was in no proportion to the real authority of the defendant to issue military orders. One is inclined to imagine that a General Field Marshall is always a military chief. However as we have seen the defendant Keitel had no authority to issue orders, whatsoever.

Field Marshal v. Blomberg, whose testimony has been submitted to the Tribunal by the prosecution, defines the position of the defendant Keitel as Chef du Bureau (Office Chief). This definition is materially correct. A Chef du Bureau has to take care that the bureau which he directs operates orderly, that the affairs are correctly and promptly settled by the competent officials. But he does not participate in the final decisions considered by his superior, here the Supreme Commander of the Wehrmacht, as being correct. While this principle holds already true in general, it is especially true here. It is known that Hitler did not accept any advice concerning military decisions. This has been proven through the hearing of evidence, particularly through the testimony of General Jodl.

7) The defendant Keitel has clearly outlined in the Affidavit K No 8 the activities of the OKW as "Coordination in the state and in the Wehrmacht". The affidavit gives an idea of the difficult and unthankful work of the defendant Keitel.

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It consisted mainly of a coordination of the desires and needs of the Wehrmacht branches. It consisted furthermore of the settlem of arising divergencies and of a struggle against Hitler's negativ attitude towards any orderly settlement, i.e. through the competent channels.

In any branch of the armed forces there are interests which differ from the interests of other branches and which cannot be entirely satisfied; sometimes they even oppose each other. This is true especially for the replacement of personnel but also for the supply of everything that is required for special warfare.

The point of intersection of all these factual and personal differences of opinion was the OKW.

If one desires to rate at its true value the incontestable fa that the defendant Keitel was shown hostility, and was personally judged unfavorably by nearly all sides, one must note that this fa occurred as a necessary result of the overlapping of factual inte and personal differences of opinion which Keitel tried to settle means of coordination or mediation, i.e. in nearly all cases by me of mutual compromising. No particular personal experience is neede in order to know that the objective mediator will always incur the ingratitude of both parties.

The same picture becomes evident in the relationship to the numerous offices which were provided with special official authori or which had Hitler's favor and special confidence for personal, mostly party-political reasons.

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One must realize these differences and overlapping interests to appreciate the heavy burden of work involved in Keitel's position.

The realization of the special relationship between the leadershi of the Armed Forces and the political sector is the more difficul as the functions of the High Command of the Armed Forces, of the Reich Minister of War and of the Chief of State were embodied in the person of Hitler, since February 4th, 1938.

Therefore, since February 4th, 1938, complete accord existed betw the political leadership and the leadership of the Armed Forces due to the identity of the person.

The assumption suggests itself -and the Prosecution made it- tha the chief of Hitler's military staff was so closely connected wit its superior, Hitler, that he must be responsible for the politica complexity, if not as the perpetrator, then in some form as provided in article 6 of the charter. This assumption is erroneou

In this connection there is no need to enter into the hierar of the Fuehrerstate

and the compelling character of a military order (compare Prof. Jahrreis presentation). The military hierarchy is older than the national socialist ideology; at any rate, it must be said - and considered on your part - that the introduction of the absolute Fuehrer principle into the Wehrmacht signified the final elimination of all endeavors which in a sense could be considered as democratic, or in any event as curbing dictatorial designs. In this connection I wish to refer to Keitel's affidavit, Document Book II No. K9 "OKW and General Staff". The rigid enforcement of the Fuehrer principle - judged in retrospect gradually sharpened the sound military obedience principle to an exaggerated militarism. This found expression amon others in the prohibition of any criticism from the lowest to the highest levels (Hitler's speech at the Kroll opera House 1936 or 1937), in the abolition of endorsements expressing divergent opinions 1938 (Aufhebung des abweichenden Aktenvermerkes) (statement by General Winter), in the prohibiti of requests by Generals to resign, and finally, in the elimination of the Commander-in-chief of the Armed Forces and of the Minister of War.

It cannot and should not be denied here that the defendant Keitel was an absolute follower of the Fuehrer principle in the Wehrmacht leadership, and that the study "Basic Considerations Regarding the Organization of the German Wehrmacht", document L 52, may be looked upon as his confession concerning the leadership in a future war, however, without a concrete war having been foreseen at that time or having prompted the writing of this study.

What does this mean for the defendant Keitel?

Whoever recognizes the Fuehrer principle as militarily correct, must act accordingly. Professor Jahrreis demonstrated that the Fuehrer principle - like another political system - is

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not absolutely good or bad, but that everything depends on the ways and on the methods of realization. and means of carrying out the principle. Keitel has a military background and favors the Fuehrer principle for the field he knows. According to this principle the responsibility lies positively with the one who has the authority to command. While the Fuehrer principle in fact hardly underwent any change in the civilian province, where it was also applied but where it amounted to no more than superficialities, this principle necessarily made itself felt much more strongly and obviously in the military sphere, particularly in the relationship between the Commander-in-chiefs and their Chiefs of the General Staff.

Formerly the chiefs of the General Staff had been the materially responsible Commanders, now they became the operational assistants to the Commanders. In the formulation of orders they were "collaborators", advisers in the field of strategic operations, for which these officers had been especially trained.

Keitel was - that is certain - neither a Commander nor chief of the General Staff, he was the Chief of the Military Office (Militaerkanzlei) under Hitler, soldier and administrator of war ministerial duties; therefore minister, claims the Prosecution.

One should not refer in this trial to distinctions which turn out to be formalistic when the real functions give another picture. This is particularly important in the case of Keitel. It should be determined what he actually was and how he acted in reality.

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The dual position created by the decree of February 4, 1938, leads to an erroneous understanding of Keitel's functions. To begin with (Lammers/ Keitel testimony) Hitler dissolved the Reich Ministry of War because he no lon wished to have a Minister of War; in spite of the fact that on the 4th of February 1938 a considerable number of functions, handled up to then by the Reich Ministry of War, had been assigned to the individual Wehrmacht branches, the OKW retained a number of functions and their administration.

To do justice to the intended strict concentration of functions pertaining to the War leadership, Keitel was not at liberty to attend to these on the basis of his complete authority according to his own judgment, but he had to present the demands of the Wehrmacht and coordinate the Wehrmacht's affairs with the duties of the other ministries.

It cannot and will not be denied that this concentration of duties in the person of Hitler was in practice unfeasible. Thus, an extensive amount of preparatory and executive work rested with Hitler's military staff, (Arbeitsstab) whose Chief of Staff was Keitel. Hence, also, the responsibility. But not with reference to important questions, especially those of a fundamental nature. It was, of course, a matter of judgment to what extent the defendant Keitel considered matters essential and fundamental and submitted them. But the evidence showed that when in doubt, Keitel was inclined to present matters rather than to make his own decision, after he had examined them conscientiously.

The sources from which Hitler got his news were so intricate that Keitel had no way of knowing whether Hitler got the news that seemed important to him through his adjutants, through Himmler and Bormann or in some other way.

To avoid afterwards

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the unavoidable discussions with Hilter who, being distrustful of everyone, always took it for granted that people would intentionally conceal things from him, Keitel was anxious not to leave himself open to reproaches for having omitted something. A characteristic example is the case of the mass escape of 80 RAF officers from camp Sagan.

In this connection the point is simply to state that Keitel in his capacity as custodian of the Ministry of war functions of the functions which still remained in the OKW, held no position as a Minister. Here, too, he was the Chief du bureau, the head of the Military office, a position which is also held by the Chief of a Ministerial office, or even a State Secretary. I wish to refer in this connect to Dr. Lammer's statement, already referred to by me (page 5358 of the German transcript), and to the affidavits of Grant Admirals Raeder and Doenitz which I have already mentioned here repeatedly.

The text of the Fuehrer decree of February 4, 1938 shows that Hitler wished to make this clear. (1915-PS). If Hitler had not had the desire to exclude eve third person from a responsible and perhaps to him uncomfortable function at t highest military sector, he might have given Keitel at least the authority to take part in Cabinet meetings. In the Fuehrer decree (2098 PS), in which the Commanders-in-Chief of the Army and Navy as well as Keitel had been given the "rank" of a Reich Minister, it was explicitly stated that both Commanders-in-Chief shall be entitled to take part in Cabinet meetings. The fact that thi was decreed simultaneously is a convincing argumentum e contrario. It proves that Hitler did not wish that his Chief of Staff of the OKW may perhaps have t opportunity to present his own opinions and possible doubts before the Cabinet

That Hitler gave the defendant Keitel the "rank" of a Reich Minister had the purpose of enabling him to carry on direct negotiation with the departmental ministers (Ressortministern). Had Keitel not have had the rank of a Reich minister, he would have been limited to conferences with State Secretaries and such, thus very handicapped in carrying out the Fuehrer's orders and tasks.-

It is erroneous, therefore, that the Prosecution termed Keitel as Reich minister, even as Reich minister "without portfolio". He was no minister, and was no member of the Reich Government. State Secretary Stuckart in a document submitted to the Prosecution has listed all members of the Reichsregierung. Keitel is not among them; he is mentioned in this document only as the holder of one of the highest offices.

Now, the Prosecution has not limited the term Reichsregierung to membership in the Reichscabinet, but considered othdr branches as part of the Reichsregierung, too. It would seem, therefore, as if the Prosecution looked upon the legal structure based on German Law as irrelevant. Pursuant to appendix B to the general Bill of Indictment the Reichsregierung is according to the indictment composed of the Individuals:

1.) Members of the regular Cabinet after the 30 January 1933, the day Hitler became Chancellor of the German Republic. The expression "regular Cabinet" used here means: Reich Minister, i.e., Head of Departments of the Central Government; Reich Minister without portfolio, Minister of State with the function of Reich Ministers and other officials entitled to participate in the Cabinet meetings.

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2) ... Members of the Ministerial Council for the Defense of the Reich (Ministerrat fuer die Reichsverteidigung).

3) ... Members of the Secret Cabinet Council.

Without prejudice to the individual responsibility of each defendant the question of whether the concept of "Reich Cabinet" (Reichsregierung) as defined by the prosecution is correct, i.e. practically speaking whether the composition of groups by the prosecution does justice to the concept of "Reich Cabinet", this question must be left to the Tribunal's examination. At any rate, it will not suffice to assume that the prosecution's respective assertion is correct.

It has already been stated that the defendant Keitel did not belong to Group I. He was neither chief of a department of the central government nor a Reich minister without portfolio nor a land (state) minister having the functions of a Reich minister nor an official who was entitled to attend Cabinet sessions

Through the hearing of evidence (testimonies by the witnesses Reich Marshal Goering, Dr. Lammers, von Neurath, Keitel, Raeder, Doenitz) it was proved that despite the Fuehrer decree of 4 February 1938 (Document 1915 PS) there never was a Secret Cabinet Council, that such council was never set up, that it never held a session and no persons involved ever received a commission. Thus, it is proved that the defendant was never a member of the Secret Cabinet Council.

It is true that Keitel was a member of the Ministerial Council for the Defense of the Reich. Witness Dr. Lammers has confirmed that becoming a member of the Ministerial Council for the Defense of the Reich did not change Keitel's official position, and especially did not make him a minister. In his affidavit of 25 November 1945, the co-defendant Dr. Frick says that Keitel worked in the Ministerial Council for the

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Dr. No.
Closing Arguments

Defense of the Reich as "liaison man".

Although he is not listed among the members of the Reich Cabinet, Keitel's capacities as a member of the so-called Three-Men-Board (Dreimaenner-Collegium") and as a member of the Reich Defense Council (Reichsverteidigungsrat) have been mentioned by the prosecution. I believe I may refer to the result of the hearing of evidence. It was shown that a "Three-Men-Board" as a government committee never existed and that the Reich Defense Council after the unpublished Reich Defense Law of 1938 never held sessions, that in any case, it never held conferences or passed resolutions.

XX In order to clarify the defendant Keitel's responsibility and competence it is necessary to analyze the concept of OKW. I ask that this statement be not considered a theoretical and, therefore, superfluous discussion.

The very fact that the Prosecution makes a sweeping and fundamental assertion and that the French Prosecution undertakes a pointedly legal examination of the question in which office the individual defendant worked, with regard to the counts he is charged with, makes it my duty to clear up a mistake made by the prosecution. However, this mistake is the more excusable because not only foreign countries but also large groups at home and even within the Wehrmacht did not know what OKW meant. It became a popular collective term for the supreme command of the Wehrmacht without anybody taking the trouble to find out who and what was behind the three words Oberkommando der Wehrmacht (High Command of the Armed Forces). This corresponds to the law of inertia governing the living together of human beings, it corresponds to the almost pathological mania to abbreviate titles of military commands. Since, furthermore, the communiques of the High Command of the Armed Forces were published daily, and all announcements referring to war events began with the words:"The High Command of the Armed Forces announces", these words did not only become impressed upon the public's mind but also the conception that the "High Command

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of the Armed Forces", was the highest military command.

The conception would be correct if the words OKW had not been translated with Oberkommando der Wehrmacht (High Command of the Wehrmacht) but rather as Supreme Commander (Oberkommandierender) of the Armed Forces. It was Hitler alone, as "Supreme Commander of the Armed Forces" who incorporated what everybody imagined the OKW to be, namely the military central planning and command headquarters.

And thus, the Supreme Command and Executive Headquarters for all military matters. In this respect the OKW was synonymous with Hitler as "Supreme Commander of the Armed Forces" which was its official title.

If, in naming the headquarters of the supreme commander, one makes abstraction of the title "Supreme Commander of the Armed Forces" which was in accordance with the prevalent Fuehrer principle, one would have to use the title "Oberkommando der Wehrmacht" (Supreme Command of the Armed Forces). This headquarters comprises the supreme commander himself, i.e. Hitler and his assistants, his staff.

The Fuehrer decree of 4 February 1938 bearing the heading:

"Decree concerning the command of the Armed Forces" resulted, through the unfortunate and vague nature of its wording in a interpretation that the "Chief OKW" mentioned in the above quoted decree of 4 February 1938 was the chief, i.e. director of the Oberkommando (High Command) of the Armed Forces. It is true that it follows from the decree that chief OKW is to mean "chief of the staff OKW", i.e. chief of Hitler's office in his capacity as supreme commander of the Armed Forces. But since then everytime that people have spoken and speak of OKW, everybody thinks of Keitel without examining whether the expression means:

OKW - Oberkommandierender (supreme commander) of the Armed Forces,

OKW - Headquarters of the Supreme Commander of the Armed Forces,

OKW - Staff of the Headquarters of the Supreme Commander of the Armed Forces.

The Prosecution makes no distinction in this respect, just as the German agencies ignored the exact difference, or at any rate, paid no attention to it. They (the German agencies), just like the Prosecution now, thought it right to claim the OKW's jurisdiction and responsibility for anything having a connection with the Armed Forces or members of the Armed Forces. From this viewpoint to claim Keitel's personal jurisdiction by virtue of the title Chief OKW there is only a short step. For Germans and foreigners the recollection of the first world war was a contributing factor in forming this opinion which was not based on an examination according to constitutional law. The relationship between Hitler and Keitel prompted the comparison with the relationship between the Kaiser and von Hindenburg. This comparison had results for the defendant Keitel which are shown at this trial. Without thinking of the fundamental differences between von Hindenburg as chief of the Great General Staff which existed until 1918 and Keitel as the chief of Hitler's military executive (Arbeits-) staff, and without knowing the field of Keitel's jurisdiction and what possibilities Keitel had as regards Hitler's plans and measures by virtue of the functions assigned to him, comparisons were made which gave rise to doubts about him. When furthermore -after the catastrophe had set in- Keitel once again came to play an outwardly similar part as representative of the Armed Forces when he had to execute the signature for unconditional sunender, this comparison also turned out to his disadvantage. People do not ask about jurisdiction when things go badly, but look for a guilty person and the guilty person is judged by external appearances. It is natural to trace back the great attention which is paid Keitel's person at this trial,

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to a considerable extent to the fact that after Hitler's death Keitel came into the public eye.

In order to see clearly what part Keitel played in reality and what share he had in the happenings, as a whole after investigating his legal competencies, I now wish to examine what actual influence he had upon the development and carrying out of the measures the effects of which constitute the subject of this trial. And from everyday experience we know that it does not matter so much what a person should be in a particular postion, but what he has made of that position by virtue of his personality.

I believe I may say that in the course of this trial the personality of no other defendant has been judged in such varying and contradictory ways as that of the defendant Keitel.

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Keitel's material responsibility is proportionate to his actual position in the tug-of war with and around Hitler, his effective influence upon that group, and with it on those circumstances as a whole which could prove the cause of the effects of Hitler's Headquarters in the military field.

I shall deal with this fundamental complex when taking up the charges made by the prosecution against Keitel, on the strength of the cross-examination of Dr. Gisevius, in other words after presentation of evidence has been completed.

In view of the comprehensive scope of Justice Jackson's questions and the answers given thereto by Dr. Gisevius, the testimony of Dr. Gisevius has become of tremendous importance in the case of the defendant Keitel.

Were Dr. Gisevius' statements about Keitel true, i.e. statements made by him in most instances in terms of conclusive findings, derived from information, the defendant Keitel would not have told the truth during the presentation of evidence. The importance of that fact becomes evident when it is considered that a negative opinion on truthfulness would of necessity destroy Keitel's defense, which in its essence draws on the subjective aspect of facts, as a whole. In view of this fact and the importance of the testimony of Dr. Gisevius also for other defendants, it becomes my duty not to leave anything undone to explain the contrast between Keitel's answers and the testimony of the witness Gisevius.

Experience has taught that dead witnesses are the best witnesses because the rendering of their purported utterances cannot be directly refuted. Testifying on the strength of information belongs to another group of statements which almost defy refutation.

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The testimony of Gisevius combines both possibilities in that he bases his testimony primarily on information obtained from witnesses who are dead.

It seems to me that Justice Jackson uses Dr. Gisevius as star-witness in his global attack on the defendant Keitel. After completion of presentation of evidence against Keitel he did not bring forward one individual circumstance but an indictment on all counts, and a judgment on Keitel's answer as a whole.

The counter-presentation of evidence is concerned, on the one hand and as far as possible, with proving the objective incorrectness of facts based upon information obtained from certain individuals, and, further, with establishing proof of the unreliability of the information. I call to mind the words which the defendant Keitel said under oath upon completion of his direct examination by me while in the witness box:

"One may hold it against me that I was wrong and made mistakes, that my attitude toward the Fuehrer Adolf Hitler was wrong and weak, but it should not be said of me that I was a coward, that I was untruthful and that I was disloyal".

I repeat in condensed form the charges made against the defendant Keitel, during interrogation by the Prosecution (proceedings of 26 April 1946, pages 8378 to 8385), as follows:

1) Keitel built an inpenetrable ring round Hitler so that the latter could be told nothing.

2) Keitel failed to pass on to Hitler reports he had received from Canaris whenever such reports covered atrocities, crimes and the like, or he gave orders to modify them.

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3.) KEITEL had a tremendous influence on the OKW and the army.

4.) KEITEL threatened his subordinates, when they made political statements that he would not protect them, he even said that he would turn them over to the Gestapo.

1.)

Dr. GISEVIUS says in one part of his statement that KEITEL had no influence over HITLER. He exonerates HITLER by explaining that KEITEL had formed a ring round HITLER, in order that the latter should be told nothing.

The English and American prosecution, in their indictment, called KEITEL a powerful staff officer, who had exerted great influence over HITLER; the French prosecution described KEITEL as a willing tool of HITLER; the German generals called him a yesman who could not carry anything through, and now KEITEL grows, according to the statement of Dr. GISEVIUS, into a real handy-mand and buffer of HITLER, who hid from the latter anything bad, who submitted to him only what he (KEITEL) saw fit, and permitted no one to approach HITLER.

a) The prevention fo access to HITLER by KEITEL, as asserted, can only be maintained by somebody who did not know the conditons prevailing around HITLER. Before the war KEITEL worked in Berlin in the Bendler Strasse, while HITLER was in the Wilhelmstrasse (Reich Chancellery). KEITEL came perhaps once a week to report, or on special order. At that time, on account of space conditions it was in fact impossible for KEITEL to exert any influence over access to the Fuehrer.

b) It was equally impossible, when HITLER

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was at the Berghof near Berchtesgaden for weeks at a time whilst KEITEL remained in Berlin.

c) At the beginning of operations, KEITEL was with JODL and the Supreme General Staff (W.F.St.) at the Fuehrer's Headquarters (FHQu). Here also they were separated. KEITEL did not sit in HITLER's outeroom, but rather in other buildings or barracks. He came at the proper time with General JODL to the conference on the situation, in which, besides HITLER, some 15 or 20 officers of all three branches of the Wehrmacht took part, apart from the conferences on the situation there was no physical contact. When HITLER wanted KEITEL for anything he sent for him.

d) Personally and physically there was closer contact in Berlin between HITLER and his adjutants, the chief of the Party Chancellery, the chief of the Presidential Chancellery and the chief of the Reich Chancellery.

KEITEL not only could not decide who could see HITLER, he also could not possibly prevent anybody going to HITLER.

e) HITLER's sources of information were the responsible heads of each department; it was occasionally not clear whence HITLER obtained his information. It may be assumed that the sources which supplied him with all kinds of information were the Party Offices and HIMMLER. It was incomprehensible to all the Chancellery Chiefs, including KEITEL, how HITLER was informed about events. It was dangerous to conceal anything, because it had to be taken into consideration that he would get to know it anyway, and then an explanation was required..

GISEVIUS did not know these conditions from his own experience;

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he never was himself near KEITEL, who never saw or spoke to him, and whose name he did not know. If he gave his opinion here, he could only base it on information given him by CANARIS, THOMAS and OSTER.

General JODL has been heard regarding this question. He certainly is the best witness in this matter, since he, as well as KEITEL, lived in the immediate vicinity of HITLER and therefore could form his own judgment. He stated concerning this matter:

"Unfortunately, it was impossible to keep things from HITLER. Many channels of information led to HITLER direct."

Upon my interrogation, at the suggestion of the Tribunal, JODL confirmed that what KEITEL deposed was quite correct, and that which witness GISEVIUS stated was in general, merely a figure of speech.

The co-defendants, Grand Admirals RAEDER and DOENITZ, have confirmed that the assertion of witness GISEVIUS that KEITEL was able to keep the high commanders of the branches of the Wehrmacht away from HITLER is false. If, however, this was not the case, it follows that the way from the branches of the Wehrmacht to the Fuehrer was open at any time.

Through the hearing of witnesses it was also established that apart from JODL, the Chief of the Supreme General Staff, and also in particular CANARIS, had immediate access to HITLER.

Thus the accusation of witness GISEVIUS, that KEITEL had formed a ring round HITLER is proved false.

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Dr. Nolte

Pleading

2. The treatment of the statements.

The witness Gisevius has declared that reports were submitted to Keitel by Canaris about atrocities in connection with deportations, extermination of Jews, concentration camps the persecution of the church and the killing of insane persons, which Keitel whithhold from Hitler.

The same is alleged about the reports of General Thomas, Chief of the Defence Economy office, the purpose of which was to inform Hitler about the war potential of the enemy and bring him to reason. Concerning admiral Canaris' reports, it must be said, that as chief of espionage and counter intelligence he naturally delivered regular reports which concerned the conduct of the war including the conduct of economic warfare.

It is affirmed here that reports were submitted on subjects which belonged neither to the jurisdiction of the Counter Intelligence Office nor of the Army High Command (OKW). It has been proved, that Hitler took strict care that every worker confined himself to his own special field and it was particularly forbidden to military offices to concern themselves with political affairs.

Keitel has declared under oath that he knew nothing about the atrocities and especialy about the extermination of the Jews, and the concentration camps. This is in absolute contradiction to the assertion of the witness Gisevius that Canaris submitted reports to the defendant Keitel on the above mentioned subjects. One can affirm that report of any kind whatsoever

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were delivered to Keitel without having to fear being contradicted, especially when one does not have to fear that these reports will be found. For if they are not delivered, neither can they be found, because they do not exist. Now Gisevius has declared that he gathered documents from the beginning which contained incriminating material. Is it not remarkable, under these circumstance, that up to now, none of these reports have been produced. If they were on hand at the Army High Command (OKW) they were to that extent an object of the accusation and the evidence. Can it be sufficient under these cirumstances if a witness declares he knows from third parties that such reports were submitted to Keitel?

Canaris, because of his particular situation, which sent him constantly to foreign countries on personal, secret errands for Hitler, had access to Hitler at all times. He would thus have had an opportunity to go to Hitler immediately if he had had serious misgivings of conscience, as Gisevius has declared he did. Why did he not do so?

Now Gisevius who in general has pronounced Qlobal and damning accusations, has luckily for Keitel, at one point of his deposition made a positive declaration that permits of objective verification. (Page 8379/80 of the German transcript):

.....I believe that I have still two examples to mention, which to me are particularly characteristic: first, the attempt was made by all possible means to induce Field Marshal Keitel to warn Hitler against the invasion of Holland and

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Dr. Nelte

Final Pleading

Belgium, that is, to inform Hitler that the information submitted by Keitel about alleged violations of neutrality by the Dutch and Belgians was false. The Counter Intelligence Office (Abwehr) was to prepare reports incriminating the Dutch and Belgians. Admiral Canaris at that time refused to sign these reports. I request that this be verified. He told Keitel repeatedly that this report which was ostensibly made by the Army High Command (OKW) was false. This is an instance where Mr. Keitel did not transmit to Hitler what he was supposed to have transmitted....."

I have submitted to Colonel General Jodl, here, on the witness stand Document PS 790 which refers to the case of the White Book about violations of neutrality by Holland and Belgium. Jodl testified, word for word:

(Page 10942/43 of the German minutes)

".....I understand the question and whould like very briefly to state the fact, as it really was, so long as disgust does not choke me. I was present when Canaris came to the Field Marshal in the Reichs Chancellery with these report notes and laid before him the project of the Foreign Office's White Book. Field Marshal Keitel then looked through this book, above all listening to the chief remarks which Canaris made at the request of the Foreign Office, namely, that the reports were perhaps still susceptible of some improvement, that he should confirm the fact that a military operation against Holland and Belgium was absolutely necessary, and that as it is expressed here, a final really striking violation of

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neutrality was still lacking. Before Canaris had said a word, Field Marshal Keitel threw the book on the table and said; I refuse to do this, how does it happen that I should take any responsability for a political decision. In this White Book appear word for word, true and correct, the very same reports that you, yourself, Canaris, brought to me." To this Canaris said: "I am entirely of the same idea. It is, in my opinion too, entirely superfluous to have this document signed on the part of the Wehrmacht and the reports that we have here, are in their totality completely sufficient to prove the violations of neutrality which have taken place in Holland and Belgium." And he advised Field Marshal Keitel not to sign it at all. That is the way it happened. The Field Marshal then took the book with him and I do not know what happened subsequently....." Keitel did not sign the White Book. There fore in the only verifiable case a clear proof is obtained of the inexactitude of Gisevius' testimony.

3. According to the statement of the witness Gisevius, Keitel exerted a tremendous influence on the Army High Command (OKW) and the Army. These words, without any presentation of concrete facts are only a phrase in the month of a man who had no contact whatsoever with Keitel. They are refuted by the statements of Goering, Doenitz and Raeder. Jodl has qualified this statement as merely a figure of speech. Insofar the witnes speaks of his tremendous influence on the OKW, it must appear questionable what the witness really means.

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Naturally, KEITEL as Chief of Staff had influence in the Army High Command, that the influence which resulted from his position which I have already discussed. How he stood with his subordinates will be taken up later.

The important thing, however, is to know whether KEITEL had a decisive and culpable influence on what happened. This influence, however, could only take effect on HITLER or the Branches of the German Armed Forces. That KEITEL had no decisive influence on HITLER has even been confirmed by GISEVIUS and his being without decisive influence on the Branches of the Armed Forces, has been established by the results of the testimony.

4. An especially damaging reproach against the defendant KEITEL was "that instead of placing himself in front of his subordinate officers to protect them, he threatened to hand them over to the Gestapo".

In contradiction to this, it has been established that no Chief of Office in the Army High Command was dismissed in the years up to 1944; furthermore, until 20 July 1944, the day of the attempt on HITLER's life and the transfer of the judicial power in the home-army to HIMMLER, no officer of the Army High Command was turned over to the Police. Grand Admiral DOENITZ has confirmed that the Branches of the Armed Forces and the Army High Command were very scrupulous in maintaining the privileges of the Armed Forces as opposed to the police .

The Court has also seen here, how General JODL spoke about his relation to the defendant KEITEL. I think this remark has a special importance. Not only because KEITEL lived on companionable and friendly terms with his official subordinate, General JODL, during their long years of cooperation. As natural as that may appear, the less natural it is,

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if one reflects that JODL in spite of his officially subordinate position, in reality became more and more HITLER's only strategic advisor. What this means, considering the preponderance of the operational tasks in the war, has been convincingly demonstrated here by General JODL.
If KEITEL took this without jealousy, freely acknowledging the superiority of his subaltern JODL in this domain, this proves in KEITEL a trait of character which refutes the information derived from obscure sources by the witness Gisevius.
The proven fact that KEITEL lived on friendly and companiable terms with his subordinate Chief of Office, CANARIS, also is incompatible with the contrary assertion of witness Gisevius.
In this connection it is necessary to refer to the fact not submitted by KEITEL but testified to by JODL without KEITEL's consent, that the latter supported and helped CANARIS' family after his arrest.
I only refer to this to refute the perhaps most serious personal reproach, according to which KEITEL did not behave decently towards his subordinates and abused his superior position - which was especially powerful in military life - even to the point of threatening violence.

According to Gisevius' evidence, Admiral CANARIS not only played a double role in the service, but also with respect to the defendant KEITEL, while exploiting the friendship shown to him, he expressed a similar attitude, whereas in the midst of his own group he openly

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spoke in a spiteful way about KEITEL.

Finally in this connection reference must still be made to the evidence of the witnesses v. BUTTLAR and BRANDENFELS (session of 8 May 1946, page 11119 of the German transcript), from which it is clear that KEITEL always treated the officers of the German Armed Forces Operational Staff kindly.

The witness mentions a quarrel between himself, Lieutenant-Colonel v. ZIERVOGEL on the one hand and HIMMLER on the other, in which KEITEL, to whom the incident was reported, immediately and energetically intervened in/to protect his subordinates against HIMMLER. The affidavit writings of the Chief of Office in Canaris' office, Admiral BUERKNER, to which I refer also testifies in the same way to KEITEL's kindly attitude towards his subordinates.

At any rate, it must be said in clarification that KEITEL many times had occasion to speak energetically to his office and department chiefs.

Dr. Gisevius himself has said here it was strictly forbidden for officers to concern themselves with political questions. The defendant KEITEL has stated that HITLER several times categorically declared the politicians were not allowed to concern themselves with military questions because they understood nothing of them; neither were the generals allowed to concern themselves with politics, because they did not understand anything about it either.

HITLER's fundamental attitude in this question in shown in the decree of 1936, or the Winter 1936/37, by which political reports to or for the Armed Forces were prohibited.

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In logical execution of Fuehrer Order No. 1 , HITLER not only wanted an absolute seperation of the fields of activity, but also that his office should not even once be informed of the proceedings in another office. It was only a logical consequence that HITLER strictly prohibited any discussion of political questions by officers, and that the defendant KEITEL, while carrying out this prohibition which KEITEL himself considered right, charged his officers, when there was reason to do so, to refrain from such discussions.
It is obvious that this was not a question of an academic discussion of political problems, but of an attitude revealing itself as negative towards the position of the Supreme Commander of the Armed Forces. As long as events prospered, these was no question of this. After Stalingrad one could hear expressions of opinion, which, at that time, were characterized by KEITEL as the expressions of weak natures.

In accordance with his fundamental attitude that the soldier during war has to show his unpretentious and natural loyalty towards his people and fatherland, represented by the head of the State and Supreme Commander of the Armed Forces, to a very special degree when reverses set in, KEITEL was actually ruthless in condemning such expressions. He did not wish even to cause the impression that he was of a different opinion than his superior, that he personally had fears.

KEITEL did this with "words". That does not mean that this was mere camouflage which did not correspond to his inner attitude; but it does mean, that the form, perhaps often rough and harsh, in which the defendant KEITEL spoke to his officers did not - even in a single

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case - lead to an officer being punished or disciplined. Dr. Gisevius, however, perhaps wanted to say that KEITEL,had dealt with his subordinates in the Army High Command in a morally reprehensible way. He himself was not personally acquainted with the defendant KEITEL, and can, therefore , say nothing from his own knowledge; he was dependent on reports from those officers who were inwardly in irreconcilable opposition to Field Marshal KEITEL without their opposition ever becoming noticeable. At no time was KEITEL approached and invited to join the conspiracy. That is understandable, as the conspirators, from their knowledge of the character and soldierly attitude of KEITEL, could not reckon with any success. Since on the other side KEITEL was entirely without misgiving, which requires no proof, the following picture resulted:

KEITEL knew nothing about any activity of conspirators; what came to him appeared in the form of tangible misgivings or personal remarks, which KEITEL handled officially, and to be sure, like a benevolent superior who, as we say, scolds without meaning it and of whom his subordinates say: "He barks but does not bite".
On the contrary, the so-called conspirators had to consider any person as an enemy, who was incapable of appreciating their own objective. Every act and every word is weighed in a fine balance and studied through the most critical lens. Since every conspirator hopes for the success of his acticity, aimed at the overthrow, he has to collect material for the coming "settlement of accounts". This is a particularly important task for a future Minister of the Interior and Police ,

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Final Pleading

From an impartial estimation of the facts verified by the present-ation of evidence it is shown that the accusations arising from the testimony of the witness GISEVIUS are not correct.

But the picture would not be complete if the personality of the witness GISELIUS would not be illuminated according to his own evidence. This judgement is made up from two factors:

1.) The career and the position of the witness.

2.) The trustworthiness of his information.

To 1.)

a) He evaded the military service through falsified papers put as his disposal by Oster.

b) He lived in Germany during the whole time since 1933 without restriction of liberty and remained in office up to 20 July 1944.

c) He was an official of the German Reich and was in its pay from the middle 1937 to the beginning of 1939 with the exception of leave.

d) He was Vice-Consul of the Reich in Switzerland since 1943 in the Consulate General at Zurich placed through Canaris as intelligence agent and was naturally paid for it. At the same time he was in connection with the enemy's intelligence service.

e) He had since 1933, when he worked in the Gestapo, the exact knowledge of all horrible happennings and the perception what consequences could arise from it for the German people.

f) A special circumstance, which shows the witness Dr.GISEVIUS in his true light, is the advice or the suggestion which he gave to the experienced bank specialist Dr. SCHACHT: He should allow the inflation and thus get the control of affairs into his own hands. This suggestion leaves only two possibilities: A complete ignorance of the national economical importance and social effect of an inflation or a boundless unscrupulousness which completely disregards the fate of the employees and workmen who are specially threatened by the inflation. An inflation brought about knowingly can be described only as a crime against the people.
SCHACHT described it as a catastrophe. It is characteristic that Dr.GISEVIUS proposed such a catastrophe without any restraint, in order

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to achieve a goal for which he was not prepared to risk his life for an instant.

To 2.)

In order to judge the reliability of the statements by the witness GISEVIUS before this tribunal, I must refer to the book submitted by the witness as evidence: " To the bitter end". This book is also a "statement" of the witness GISEVIUS.

To err is human, but when in the year 1945 - after the collapse of Germany - a book appears in which facts and occurences are communicated of historical and for those personally involved of moral and even criminal importance, the incorrectness of which has become obvious in the meantime, then the mistake is unforgiveable and there is no longer an excuse for refering to false informations.

I will refer only slightly to the many inaccuracies contained in this book which were established before this tribunal through the cross examination by Dr. KUBUSCHOK: (page 8413 of the German transcript 26 April 1946)

1.) Dr. GISEVIUS has asserted in his book that von PAPEN has not resigned notwithstanding the events of 30 June 1934.
It is established that von PAPEN has resigned and that the public announcement was simply contemplated to be made at a later date.
2.) Dr. GISEVIUS asserted further that von PAPEN took part in the Cabinet Meeting which he describes with exacts details and when the law was resolved that the measures taken on 30 June 34 were correct in the interest of the state.
Actually von PAPEN has never taken part in this Meeting.

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3.) Dr. Gisevius asserted finally that von Papen travelled to Hindenburg, but had not raised a sufficient protest against the measures. Actually it was that the attempts of von Papen to visit Hindenburg were frustrated, therefore he could not visit him.

4.) Also the assertion in the book of Dr. Gisevius that von Papen took part in the Meeting of the Reichstag, in which the measures of 30 June were approved, must be admitted as incorrect information.

One would not define it as an unfounded reproach if such a statement is described dubious and the author not reliable.

It is difficult for me as a German defense counsel to deal calmly with this problem. The statement of Gisevius contains the entire tragedy of the German people, it is for me a proof of the weakness and of the decadenc of the German circles who played with the idea of revolt and high treason, without apprehending intimately the distress of the people. They were a top level of the future ministers and generals without support from the large masses of our people, working classes, as Reich Minister Severing has declared here with all clearness.

Mr. Justice Jackson has used the word "resistance movement" in connectic with the examination of the witness Gisevius. We have often heard during the progress of this trial about unfrightened, brave men and women, who fought for their country, have suffered and died. They were our enemies. But nobody would deny the acknowledgment of their heroism, who tried to judge these things objectively. But where will you find this heroism in the group around Gisevius?

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Dr. Nelte

Final Pleading

If one reads his book "To the bitter end" and one has heard him here, one looks in vain for a self-sacrificing man. Even the late deed of a Stauffenberg lacks heroism, as it lacked the decision of the self-sacrifice. Gisevius speaks in the time up to 1938- as if there was time - to hold back the wheel of the fate successfully, always about negotiations, conferences, but all these men wish that the others, - that is the generals - should negotiate. If one considers the knowledge of affairs, which Gisevius had as member of the Gestapo and all his friends, if one takes into account the perception of the great danger in which the people were suspended, then the decision for action should not be doubtful for an instant for the patriotic men, as the members of the group claimed themselves to be. But what did they do? As the leaders of the army hesitated or refused, they did not think about their own action, but turned to the foreign countries.

One would have an understanding for the Germans who were treated in an outragious manner or who had thrown out the Government, particularly when th had the means or ways to undertake the means of direct action. But the Gisevius group had such means and possibilities. Men in the most influentia key positions, men in the OKW, in Hitler's closest circle belonged to them. Men, who had the possibility to get close to Hitler and to his evil men behind the scenes. Not one of them found the courage for action, when there was time. What did they do instead? They remained in office, they helped effectively, so that such crimes as are subject to this trial could be committed.

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I should not like to leave any doubt that the fact of the conspiracy in itself is of no importance in the question of trustworthiness to be discussed here. Wherever is a conspirator out of pure motives, who, in the realization of the danger which threatens his country, risks his life, is not only clean, but also desirves the gratitude of the fatherland.

If GISEVIUS and his friends, who, in their positions were informed about everything which, in its entire frightfulness, most Germans have only learned through this trial, had served their country in unselfish sacrifice, than perhaps we and the world would have been spared much distress and suffering.

Grand Admiral D ENITZ, who knew Admiral CANARIS well, said:

"During the time that he was in the Navy, Admiral CANARIS was an officer in whom little trust was placed. He was an altogether different person from us. We said that he had seven souls in his breast".

(Transcript page 92 (1)

Dr. GISEVIUS himself said of CANARIS

"The successor was CANARIS "at that time captain in the Navy" quite clever and more cunning than HIMMLER and HEYDRICH together."

(Page 319 of the book "To the bitter end" which was presented in the SCHACHT case as ducumentary evidence)

The figure of CANARIS is almost mystical. This is probably necessarily the case

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with men who concern themselves with matters which cannot stand the clear light of day. His position was of great importance for the entire conduct of the war. It is clear that such people must have to the highest degree the confidence of both the political and military leaders. One can judge by the amount of confidence which somebody enjoys whether he trustworthy. He also enjoyed the confidence of the defendant KEITEL, with whom, as is proven he associated in a friendly and companionable way, and not only as a subordinate with his superior. JODL declare that KEITEL was much too trusting. Can one believe that such a condition existed for years if KEITEL had dealt with the alleged reports of CANARIS as the witness GISEVIUS has testified here, or if he could even have received an order to commit murder from KEITEL, as LAHOUSEN would have us believe in the cases of Generals WEYGAND and GIRAUD ?

Now if CANARIS enjoyed such great confidence with HITLER and KEITEL , but at the same time also worked authoritatively in GISEVIUS's group, his character must not only be considered duel, but unreliable and untrustworthly as well. It is understandable that a person might temporarily display such a dual nature, if it is done for the sake of a higher aim, to serve ones country, to liberate it from a tyrant. However, one searches here in vain for such a serious aim, for a deed which makes the unlawful action appear in a light of greater moral right.

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CANARIS believed that he could satisfy his revolutionary duty by expressing doubts in the circle of his trusted political associates and raising the severest kind of criticisms. He waited, like others, for the generals to act as an admiral he apparantly did not count himself to this circle -, while he himself cultivated his confidential relations with HITLER and KEITEL. According to the testimony of the witness GISEVI US, one must assume that he permitted his political associates to establish contacts abroad.

When did CANARIS tell the truth? He was necessarily entangled in falsehodd. Did he not have to tell his political associates something, which,in the opinion of the group, looked like activity? Did he not also have to report on what he supposetly had told KEITEL?

He is the typical example of an over-refined, highly intelligent drawing-room conspirator, protected by the nature of his obscure activity, which, to a large extent, could not be checked, in whom, however, the spirit of action was lacking.

KEITEL had such confidence in CANARIS and such a liking for him that he again and again ignored J DL's various warnings and even up to the time after 2 .July 1944, maintained his confidence in CANARIS.

Although CANARIS was the most severe enemy of the Gestapo, he worked, certainly not out of conviction, closely and astonishingly friendly with HIMMLER and HEYDRICH. There existed a certain competition, HIMMLER had a central information office, which at first concentrated itself on the homeland then however, step by step, it expanded abroad. The defendant KALTENBRUNNER testified concerning this:

This competition carried with it the possibility

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of frictions, which, with HIMMLER's hunger for power, known also to CANARIS, could easily lead that the " Counterintelligence Department " (Abteilung "Abwehr") was entirely integrated into the Reich Security Main Office (RSHA). CANARIS saw himself and the circle of compirators endangered. He therefore did something very clever, organizing a cooperation, with the result that HIMMLER covered him in various dubious affairs. For a long time the cooperation went well, until the "[illegible]STER" case and the "ANKARA" case gave the RSAH's foreign information service" (organized by KALTENBRUNNER) the opportunity to discredit the Counterintelligence (Abwehr) in the [illegible]KW so strongly that HITLER decreed the surrender of tye counterintelligence department. (Abteilung Abwehr). What is important in this connection is the fact of HIMMLER's particular cooperation with CANARIS and the consequence resulting from this with compelling logic, that CANARIS at no time can have presented a report which would have seriously incriminated HIMMLER and his organizations. For,if CANARIS had presented such a written order to KEITEL, he either would have had to present the report to HITLER or inquire from HIMMLER and the RSHA respectively. In both cases HIMMLER would have become informed. The consequence would have been clear. This cooperation would have become enmity and enmity with HIMMLER meant the greatest danger for CANARIS and his group.
I believe that this compelling logic is stronger than an account by the witness GISEVIUS, which concerns itself with alleged statements by CANARIS.

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This is the iridescent portrait of the character of a man whom one may judge at will, but who neither was a conspirator nor can make claim to credibility.

2. For an opinion on the character and with it on the credibility of General Thomas, the following documents are important:

document 2353 PS (green folder)
document 270 EC
document 271 EC

1) Document 2353 PS, entitled "part A, Work done in the fields of war economy and armaments industry until the beginning of mobilization in 1939" was presented by the prosecution to prove rearmament. It does furnish this proof which is not being denied by the defendant Keitel.

After being taken prisoner, Thomas made a declaration in reference to this work of his which says that after 20 July 1944 he revised his rather critical memorandum on the rebuilding of German war economy in such a manner that in case of need, that is in proceddings before a German court, it might serve in his defense.

His declaration precedes and is attached to document 2353 PS; from this derive the following alternatives: Either the memorandum 2353 PS(is untrue in which case it cannot be presented as evidence by the prosecution) or it is true, thereby raising the question of the credibility of this immediate witness as source of information for

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Dr. Gisevius

On the whole, the memorandum is true. It is also true, however, that Thomas whole-heartedly cooperated not only in rearmament but also in the organization "Oldenburg", that is in economic preparation for war against the USSR.
I refer to Exhibit USA 141 (conversation of 29 April 1941).

Purpose of the meetings: Introduction to organizational reconstruction of the economic sector of plan "Barbarossa-Oldenburg". There it is said:
"He the Reich Marshal, has delegated the task to an economic leadership staff headed by the chief of the Wirtschafts-Ruestungs Amt (economy and armaments office) (Thomas)."
For this task General Thomas became thereby attached to the Reich Marshal as the chief of this entire undertaking. As explained in Keitels affidavit (document book 2, Exhibit No. K 11), Thomas prepared and directed the entire organizational construction of the undertaking.

Is this consonant with the contention of Gisevius, and now also of Thomas, that on principle they were opposed to war and with their convinced attitude against Hitler? The task which Thomas assumed and organized was unmistakably incompatible with previous international law. At no time did he protest against assumption of this office.

2. The attitude of General Thomas is also found in document EC 270, submitted by the prosecution on 6 May 1946. It is the draft of a letter

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written on 27 April 1938 by the war-economy special-purpose staff (chief General Thomas), addressed to department L (national defense within the Supreme General Staff), not signed by the defendant Keitel. This involves the struggle for power by general plenipotentiary (GBW) FUNK, and Goering as the head of the Four-Year Plan. Document EC 271 shows that the aim of General Thomas was to place the entire war economy under the supervision of OKW, that is the war-economy staff which he headed. Under the disguise of an interpretation of the decree of 4 February 1938 on "direction of German armament" he attempted to prevent Funk's subordination to the then Field Marshal Goering as head of the Four-Year Plan; at the same time he also wanted to prevent the general plenipotentiary from becoming independent. It was "to be established (page 5 of the document, last paragraph of the communication) that in all questions pertaining to Wehrmacht supplies, the general plenipotentiary was to carry out the instructions of OKW."
This plan did not succeed; nor did Keitel approve it. But from document EC 270, with special reference to figures 1 to 9 (pages 2 to 4) it follows that the endeavor of General Thomas was to extend the scope of his office to that of a general staff on economics within OKW, a plan which Thomas had been pursuing for years already, in opposition to Keitel and Jodl; He is the man an opportunist and a double-dealer, who claims to have fought against the methods termed by him corrupt and contrary to international law.

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The defendant KEITEL admits that THOMAS made reports pointing to the scarcity of raw materials; he uttered doubts as to whether armament would suffice to carry on a war. But these doubts were shared by the generals, especially by KEITEL. General JODL confirmed (page 10946 of the German transcript of court proceedings) that such reports were submitted to HITLER and THOMAS so that Dr. GISEVIUS' contention is proven incorrect also in that respect:

3) As one of his most intimate friends among his political associates, the witness Dr. GISEVIUS named NEBE, Gruppenfuehrer SS (SS Major General) and Police General, chief of division V in RSHA (Reich Security Main Office).

According to the statements by Dr. GISEVIUS, NEBE had been his friend since 1933 and was thoroughly familiar with the trend of thought of the witness. He remained in RSHA - discussed numerous times here - until 20 July 1944, and in the year 1944 he had power to issue orders to headquarters of the Special Service Office (Sonderdienst) in charge of prevention of escape of prisoners of war. This is shown by enclosure to document USSR 413, submitted by the prosecution, testimony of the witness WIELLEN also heard here.

To characterize this witness - from whom Dr. GISEVIUS after leaving the Gestapo claims to have received information currently - it should be pointed out that from 1933 to July, 1944, NEBE served in RSHA, evidently to the satisfaction of his superiors HIMMLER, HEYDRICH and KALTENBRUNNER; otherwise he would not have stayed in office that long and would not have been promoted to the rank of Police General and SS Gruppenfuehrer (SS Major General). While thus, on the one hand

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he fulfilled the tasks incumbent upon him by reason of his position, for 11 years, with the well known methods of the Gestapo and later the Kripo (criminal police) which were under HIMMLER, Dr. GISEVIUS refers to him as his friend and political associate. Now, it might be assumed, perhaps, that in the position he held he was able to prevent disaster, possibly even to hold up execution of orders. Document USSR 413, just referred to, shows that this is not what NEBE did; rather did he work as a loyal HIMMLER police general. In the deposition by WIELEN - forming part of the document - the horrible case of the 50 escaped RAF fliers in which case General NEBE and Dr. GISEVIUS were involved is dealt with.

On this WIELEN states the following:

"One day during that time I received an order around noontime, by telegraph, from General NEBE to proceed to Berlin immediately, to become acquainted with a confidential order. Arriving in Berlin on the evening of that day, I reported to General NEBE at his office, Wendischer Markt 5 to 7. I gave him a condensed report on the status of the matter at that time. He then showed me a teletype order, signed by KALTENBRUNNER, to the effect that, in conformity with the Fuehrer's explicit and personal order, more than half of the officers who escaped from Sagan were to be shot when recaptured. General NEBE seemed himself horrified and greatly worried. I later learned that he had not gone to bed at all that night but that he spent it on his couch at the office. I, too, was deeply upset

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because of the step that was to be taken and protested against its being carried out: I said this violates martial law and undoubtedly was bound to result in retaliatory measures against those of our own officers who were in English camps, as prisoners of war, and that I simply refuse to take any responsibility. General NEBE declared that in this instance I am not at all responsible since the state police was to act entirely on its own and that, after all, orders given by the Fuehrer had to be executed without protest. NEBE added furthermore that, naturally, it was my duty to keep the matter in deepest secrecy and that the reason for his showing me the original order was so that I would make no trouble for the state police."

Any comment seems superfluous. This is significant for NEBE's personality. The trustworthiness of a person is an inseparable part of his entire personality. Information obtained from a person who, for more than a decade, was able to play such an abominable double role can have no claim to faith.

I believe that this analysis of the statements of the witness Dr. GISEVIUS and of the men belonging to the GISEVIUS group gives me the right to say that the charges made against the defendant KEITEL by the witness can be no suitable foundation for the argument of the prosecution, that

the defendant KEITEL:

1. formed a circle around HITLER,
2. his influence on the OKW and the armed forces was tremendous,
3. he did not submit reports on atrocities and crimes to HITLER,

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4. That he did not protect his subordinates, even thereatened them with the Gestapo.

On the other hand it is true that the effective position of KEITEL, however important it may have seemed to outsiders, was neither decisive nor of determinating importance, whether for the total sum of event or also for the basic and important decisions of HITLER. Justice can be done to the actual importance of this activity if one says that it was tremendous, because physically and spiritually it went beyond human strength; because it placed the defendant permanently in a dilemma between his military point of view and the unbending will of HITLER, to whom he was faithfully, far too faithfully devoted. Physically, because it was nearly insoluble, because it had no sharply defined, clear outlines, but consisted in the eternal equalizing of factual differences, the adjustment of personal sensitiveness, the "self-protection" against encroachments of the individual offices among themselves or against the OKW (questions of competence); in clever manoeuvring when HITLER, in explosive reaction to disagreeable news, wished to issue extravagant orders, in the settlement of all disagreeable matters which HITLER did not wish to attend to himself. (For instance refusal to listen to complaints which had reached him directly through the adjutant's office, meeting out of reprimands, dismissals from service, etc.)

It was a tremendoudly thankless task, which found only very slight compensation in the brilliant situation in the immediate proximity to the head of the State, in the decorative participation in all events of what is called world history, in the representative duties of a Field Marshal.

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KEITEL a political General ?

The defendant KEITEL is accused of having taken part in, helping and promoting the planning, preparing of and inciting to aggressive wars with violations of international Arcaties and engagements.

The defendant stated in the witness box in this connection:

In-so-far as knowledge or having cognizance of the intention to attack is concerned, I shall come back to the subject in connection with other things. The facts as such are set forth by the defendant KEITEL.

In so far as the initiating and carrying out of strategic measures are concerned, the defence counsel for General JODL will deal with these questions.

I would like mention here a single event which gained historical and for the defendant KEITEL a personal importance during this trial: the conversation between HITLER and von SCHUSCHNIGG on the Ober-Salzberg on February 12th,1938. This was the sheet-lightning that could have revealed the coming of the storm to clear- sighted peoples. KEITEL, chief of the German High Command for only a week, so far without any contact with high political events, did not perceive these signs of approaching stormy weather. HITLER, who after the sudden change of 4 Feb 38 had immediately gone to the Obersalzberg, called KEITEL for the first time, without giving any explanation. KEITEL came, without knowing what HITLER wanted or what was to happen in Obersalzberg. Only in the course of the day

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did he realize that his presence could have any connection with the presence of Schuschnigg and the discussion of the Austrian evidence proved, in any of the conversations, especially with Schuschnigg or Dr. Schmidt. He however realized that his presence, together with that of generals von Reichenau and Sperrle should have a significance for the conversations with Schuschnigg; for, since Hitler did not speak to him at all about military matters, he was forced to the conclusion that the representatives of the Supreme Command of the Wehrmacht, the Army and the Air Force had been invited to demonstrate the power of the Wehrmacht in Schuschnigg's eyes.

The situation was therefore such that Hitler had the intention of using the representatives of the Wehrmacht as a means of pressure for the realisation of his political plans, that they had no knowledge of this beforehand, and that they realized this intention only later on.

This meeting at the Obersalzberg is now being used by the prosecution as a basis for the accusation that Keitel was a political general. The prosecution introduced the conversations between Hitler and Hacha and Tiso, at which the defendant Keitel also was present as a further symptomatic event.

This evidence does not appear convincing, if it is intended to prove that Keitel was also an active party in the

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political conversations.

When the defendant Keitel took part in State visits and conversations with foreign statesmen, he did not participate in the conversations, but he was present.

Hitler liked to have Keitel in his entourage as representative of the Wehrmacht. Thus Keitel was also present at Godesberg when Prime Minister Chamberlain went there, also at Munich on September 30th 1938 and at the visit of Molotov in November1940. He was also present at the meetings of Hitler with Marshall Petain, with General Franco, King Boris, with Regent von Horthy and with Mussolini.

This function of Keitel is however insufficient to make the defendant into a General who would have taken a determinative part in the political evolution. How little this assertion is justified is seen from the fact testified to by admiral Buerckner, that Keitel was extremely careful not to intrude himself into the affairs of the Foreign Office and gave his officers the order not to engage in matters of foreign policy (e.g. the military attachés).

In internal politica the exclusion of the chief of the OKW resulted from the removal of the Reich Minister for War, already dealt with, and the elimination thereby aimed at and achieved of the political representation of the Wehrmacht in the Cabinet.

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It is self-evident, and has already been pointed out, that the position of the defendant KEITEL as Chief of the OKW implied and in time of war must have implied to an increased extent his coming into some kind of contract of with all the Ministries and highest Offices, and his dealing with them as the representative of the OKW, that is to say of HITLER.

That did not make KEITEL a politician, i.e. a man who took part in an advisory capacity in the determination of Governmental aims and had an influence on the same.

In his high office he naturally worked to carry out these aims and thus far bears a responsibility, but not as a political General.

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1. The idea of war against Russia was rejected by KEITEL. This found visible expression in the memorandum which Field Marshal KEITEL drew up, discussed with von RIBBENTROP, and handed over to HITLER. According to his sworn statements the reasons were as follows:

a) military considerations,

b) the non-aggression pact with the Soviet Union, datet 23 August 1939.

In spite of personal presentation the memorandum had no success. HITLER, as usual in questions of strategic nature, rejected KEITEL's point of view as unconvincing.

In this connection and due to HITLER's strict refusal, KEITEL asked for release and transfer to the front. This is the case which Reich Marshal GOERING confirmed in his interrogation. HITLER refused, sharply critisizing the habit of Generals asking to be released or tendering their resignation whenever he (HITLER) did not approve their opinions or suggestions.

That settled it for KEITEL: he remained in his post, did his duty, and fulfilled his obligations in carrying out the tasks falling to him within the frame work of further preparations. Here, too, in keeping with his conception of duty, KEITEL did not make known to the outside world his basically negative attitude towards the war with Russia, after HITLER had made his decision.

This case is in several respects typical of KEITEL and his judgment by others. We know - and it has been proved by the evidence - that other Generals were also opposed to war with the Soviet Union. Their objections, too, were dispersed or rejected by HITLER. They, too, accepted

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the decision of the Supreme Commander of the Wehrmacht, continued to do their duty and carried out the orders given to them.

But there was one basic difference: these other Generals went back to their Headquarters after the discussion. There, in their own circle of officers they spoke about the decision made by HITLER. Of course, it was disputed, but they acted in accordance with it.

Since Field Marshal KEITEL, due to his military conception as already depicted did not make public to the generals, when they appeared in the Fuehrer Headquarters for discussions, his own attitude, although it too was at variance the impression was bound to be created that Field Marshal KEITEL completely agreed with HITLER and did not support the scruples of Wehrmacht branches.

Thus the opinion was created in the course of time and disseminated through the entire army that Field Marshal KEITEL was a "Yes man", a tool of HITLER, that he was betraying the interests of the Wehrmacht. These generals did not see and were not interested in the fact that this man maintained a constant battle day after day over all possible problems with HITLER and the forces which influenced him from all sides.

This picture which definitely did not apply to KEITEL, especially not in the sphere of strategic operations - planning and execution - , as has been stated here in detail, became a distorted picture which has maintained its effect up t to and in these trials. May be not without the fault of the defendant KEITEL. About the justification of his conception of duty there can basically be no argument, it has

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been confirmed here by the witness Admiral Schulte-Moenting to be true for the defendant Grand Admiral Raeder, too. There can be no doubt that the other Admirals and Generals took basically the same point of view, that is is impossible in the military sphere to criticize before subordinates the decision of a superior as expressed in an order, even if one has scruples against the order oneself.

One may say that every principle, every basic rule must be interpreted and used in a reasonable way, that every exaggeration of a good principle means its devaluation. In the case of Keitel this objection touches the problem of his responsibility and guilt altogether.

Does the non-recognizition of the point where a principle in itself correct is being exaggerated and in this way endangers the goods for the protection of which it has been established constitute guilt?

In the case of Keitel we must consider the root of this soldierly principle: the thoughts and ideas which the defendant Keitel had in this connection were the following:

It is undeniable that the principle of obedience is necessary for all armed forces; one may say that obedience - a virtue in civilian life and therefore more or less unstable in its application - must be the essential element of the military character, because without this principle of obedience the aim which is to be accomplished by the armed forces could not be accomplished.

<u>This aim:</u>

the security of the country, the protection of the people, the maintenance of the most valuable national possessions,

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is so sacred that the importance of the principle of obedience cannot be evaluated high enough. From this springs the duty for those who are called upon to preserve that national instrument, the Wehrmacht, within the scope of its higher task, to emphasize the importance of obedience. But what the General demands of the soldier, because it is indispensable, must remain in force for himself, too. The same applies to the principle of obedience.

It would now be dangerous to relax an order or even an essential principle by from the beginning pointing out exaggerations and taking them into consideration. Such relaxation would leave the principle of decision to the individual, which means to his judgment. There might be such cases, where the decision depends or must be made dependent on actual circumstances. In principle, such relaxation would lead to devaluation, even to the abrogation of the principle. In order to prevent this danger and to eliminate any doubt as to its absolute importance, the principle of obedience has been changed in military life into one of "absolute obedience" and embodied in the military oath. This, too, is valid for the General as well as for the common soldier. The defendant KEITEL has not only grown up in these ways of thinking, but in the 37 years of his military service (up to 1938), among it in the first World War, he had also come to the conviction that this principle of obedience is the strongest pillar upon which the Wehrmacht rests and with it the security of the country.

Deeply imbued with the importance of his profession, he had served the Kaiser, Ebert, and von HINDENBURG in accordance with this principle.

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Dr. Nelte

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But while they, as the representatives of the State, had in some an way/impersonal and symbolic effect on Keitel, Hitler, from 1934, at first appeared the same to him, i.e. without any personal touch, in spite of the fact that his name was mentioned in the military oath, but only as representative of the State. In 1938, Keitel, as Chief of the OKW came into the immediate circle and the personal sphere of activity of Hitler. It would appear to be important for the further development and for the judging of Keitel, to realise that Keitel was now exposed to the direct effects of Hitler's personality, due to the soldierly conception of duty which was especially developed in him, and due to the pronounced feeling for soldierly obedience. I incline to the assumption that Hitler had clearly realized, in the preliminary discussions with Keitel which led to the Fuehrer order of 4 February 1938, that Keitel was a personality, such as he had included in his calculations:

> a man upon whom he could rely as soldier at any time, who was devoted to him in convinced soldierly faithfulness; who could by his appearance, worthly appear for the Wehrmacht in his environment, i.e. for purposes of representation, who by reason of his power of judgment, was an extraordinary organizer, (according to the report of Field Marshal v. Blomberg).

That Hitler consequently strongly influenced this man who really admired him, and that he brought him completely under his charm is a fact which Keitel himself has admitted.

It must be remembered, if one wishes to understand, how it could happen that Keitel made out and forwarded orders of Hitler which were incompatible with the traditional

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conception of a German officer, as for instance the orders C 50 and PS 447 which were submitted by the Soviet Russian Prosecution. By the exploitation of the readiness for action for Germany, which was presumed to be a matter of course for all Generals, Hitler understood how to camouflage his Party-political aims with the defense of national interests, and to present the pending fight against the Soviet Union as an inevitable dispute, even as a defensive war, imposed by positive news reports, in which it was a question of to be or not to be for Germany. (Speech of 24 June 1941, statement of Raeder.)

Therewith Hitler asked the fateful question.

That the conscience of the old officer nevertheless pricked him (KEITEL) and that he repeatedly raised objections to the drafts of the orders, although without success, that has been confirmed by General JODL here in the witness box.

During the cross examination by the representative of the American Prosecution, the defendant KEITEL has openly stated that he was conscious of the criminal nature of these orders, but that he had believed himself to be unable to evade the instructions of the Supreme Commander of the Army and of the Head of the State whose final word against all objections was:

> "I do not know why you are worrying; after all, you have no responsibility. nly I have it towards the German people."

This is the analysis of KEITEL's attitude towards the so-called ideologically qualified orders of HITLER.

KEITEL's last, and in many cases justified hope, was

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that the commanders-in-chief and subordinate commanders of the Wehrmacht would in practice either not apply at all or only moderately, these hard and even inhuman orders within the framework of their judgment and their responsibility. In his position, KEITEL had only the choice of military disobidience by refusing to forward the orders or of the carrying out/instruction of the to forward the orders . Whether and what else he could or should have done, I shall examine in another connection. The question here is to make clear how it happened that KEITEL forwarded orders which undeniably violated the regulations of land warfare and humanity, and that he did not recognize the point at which even the strict duty of the soldier to obey must end, by reason of his duty to obey, of his sworn faithfulness to the Supreme Commander, and of the fact that he saw in the order of the Head of the State the absolution of his own responsibility.

All soldiers who appear here as defendants or as witnesses have referred to the duty of allegiance. The all, even so far as they sooner or later recognized that HITLER had drawn them and the Wehrmacht into his egocentric and risky game, have considered the oath of allegiance as given to their country, and have believed that they must continue their duty under circumstances which must appear inconceivable to us and to them themselves, after realising the resulting disaster. Not only soldiers like RAEDER, DOENITZ and JODL, but also PAULUS have kept their positions and have remained in their posts, and we have heard the same from other defendants, too. The statements of the defendants SPEER and JODL in this connection were deeply moving.

It must be examined as to whether these facts relieve the defendant KEITEL

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of a punishable responsibility. KEITEL does not deny that his is a heavy moral responsibility. He has recognized that whoever played even the smalle part in this terrible drama, cannot feel himself free from a moral guilt in which he was entangled.

If I nevertheless emphasize the legal point of view, I am so doing, because Justice Jackson has expressly referred, in his speech for the Prosecution, to the law as basis of your verdict - to International Law, the law of the individual States, and to the law which the victorious Powers have embodied in the Statute.

I herewith state that the defendant KEITEL has recognized that some of HITLER's orders violated International Law. The Statute has determined that a soldier cannot refer to an order of a superior or of a Government in order to clear himself. At the beginning of my statement I have asked you to examine whether, independent of the terms of the Statute, the principle is unimpeachable that the standard for what is right or wrong can be settled on a national basis only.

The French Prosecutor DE MENTHON has pointed to the "demoniacal" undertaking of HITLER and therewith pronounced a word which had necessarily to be brought up in a discussion which is dedicated to the investigation of events which are the background of these trials. It is the natural endeavour of thinking people to clear up the last reasons for events which have deeply touched the fate of mankind in these days. If these events deviate from the regular happenings and the natural course of things so much

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Dr. Nelte

Final pleading

that they go beyond our imagination, we take our refuge in metaphysical powers. I ask you not to consider the pointing to such metaphysical forces as an attempt to evade the responsibility. We are all still under the impress of the attempt of one man to lead the world off its course. I should not like to be misunderstood: the "demoniacal" is and incomprehensible, yet extremely real power. Many call it "Fate". If I speak of fateful, metaphysical powers, I do not mean the Fate of antiquity and of pre-Cristian Germanism to which even the Gods are necessarily subject.

I should like to make it quite clear: the demoniacal, about which I am talking in this connection, does not exclude the interior liberty of the man to recognize evil; of course, I believe that the demoniacal, if it can become effective, limits the capacity for perception. "Principiis obsta". It says in old German idiom (Germanentum): "Resist from the very start, the remedy will be prepared too late."

Fate and guilt are not Poles, the effects of which exclude each other, but they are circles which overlap, so that there are sections of life, when both power groups are operative. It can here be indicated in a few words only, what things are individually to be considered as governed by fate: nationality, their historical and traditional conditions of existence, the individual origin, the professional surroundings.

Mankind of to-day cannot yet recognize the difference between the fateful, i.e. the metaphysical powers which have become operative, and the persons who

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have appeared as tools of these powers. The people therefore who made their appearance as actors on the stage of this terrible drama are "Guilty people" to them. The further removed mankind is from the events the less it sees or feels the consequences, the more objective the judgement - divested of actuality and subjective instincts- becomes within the framework of the history of human development. In this way the active figures and their share in the events will be better recognized. But as long as we are under the recent impression of the events, we, it is true, realise the border line between "Guilt" and "Fate", but we cannot yet recognize it clearly.

No lesser person than Marshal Stalin has pointed out in February 1946 that the second World War was not so much the result of mistakes of individual statesmen, but rather the consequence of a development of economic and political tension on the basis of the existing capitalist, economic system.

Hitler was the exponent of an idea. He was not only the representative of a party political program, but also of a philosophy which divided him and the German people from the ideology of the rest of the world. All toleration and all compromise was unknown to him as a convinced enemy of the parliamentary democracy, possessed by the idea of the correctness of his ideology. This led to an egocentric ideology which recognized only his own ideas and his own decisions as right. It led to the "Fuehrer State", in which he was enthroned on a lonely height as incarnation of this faith, unapproachable by all scruples and pretexts distrustful of all whom he suspected

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as potential dangers to his power, and brutal, if something crossed his ideological course.

This character picture which has been verified by the evidence, is incompatible with the assumption of the prosecution that a partnership of interests could have existed between Hitler and the defendant. There was no partnership of interests and no common planning between Hitler and th men who were supposed to be his advisers. The hierarchy of the Fuehrer State, in association with the Fuehrer order No. 1, which expresses the separation of work in its most flagrant form, admits only the conclusion that the so-called co-workers were only executive mouthpieces or tools of an overwhelming will, but not men who translated their own will into deeds. The only question therefore, which can be raised, is whether these men were guilty in that they put themselves at the disposal of such a system, and that they submitted to the will for power of a man like Hitler.

This problem needs a special examination, as far as soldiers are concerned; because this "submitting to somebody's will", which is remote from the existence of a free man, is for the soldier the basic element of hi profession: Obedience and the duty of allegiance which exist for the sold in all political systems.

The legal problem of the conspiracy in the sense of the indictment is dealt with by my collegue Dr. Stahmer. In the individual case of the defendant Keitel I should only like to point out two sentences of the speech as starting point of my statements:

1): It is not sufficient that the plan is common to them all,

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they must know about it being common to all of them, and each one of them must accept voluntarily the plan as his own."

2). " That is why a conspiracy with a dictator at the head is a contradiction in itself. The dictator does not conspire with his followers, he does not conclude an agreement with them, but he dictates."

Dr. STAHMER has pointed out that no one acting under or on account of pressure can therefore be a conspirator. I should like to modify this for the circle to which the defendant KEITEL belonged. It would not conclusively represent the real circumstances if it were said that the defendants belonging to the military branch have acted on account of or under pressure. It is correct to say that soldiers do not act voluntarily i.e. of their own free will. They must do what they are ordered, without it mattering whether or not they approve of it. The training of will power or in any case consideration of the training of will power is accordingly eliminated in connection with soldiers' duties; it will always and everywhere be eliminated on account of the nature of the military profession, and it cannot appear as a determinative factor in the genesis and execution of orders, if the absolute Fuehrer principle is not in force in the Wehrmacht. The question, therefore, in this military sphere is not one of an abstract and with it theoretical deduction, but of a compelling conclusion resulting from the nature and from the practice of the military profession, when I say:

" The activity of the defendant KEITEL was founded on the basis of military orders. The activity of the defendant KEITEL concerning the genesis of orders, decrees and other measures of HITLER, even in so far as they are criminal, cannot therefore be considered as partnership work, i.e. as the result of a common planning within the meaning of conspiracy.

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KEITEL's activity concerning the execution of orders consists in the due transmission of orders in the operations Sector and in the due carrying out of orders in the administration of the war, i.e. the so-called Administrativn Sector."

These activities however could be juridically qualified, the prosecution has, as I think, so far submitted nothing which could possibly refute this consideration.

This is the principle of any soldier and is adopted in every place where the system of orders holds good. The significance of this assertion is particularly important in the case of the defendant KEITEL. It would be possible to oppose such a presentation of evidence by considering that KEITEL did not act as a soldier or in any case as soldier only and that therefore he cannot be considered responsible for the consequences of what is merely a system of orders. The unfortunate structure of his position and the manifold tasks, of a chief of the O.K.W., sometimes even not systematically conceivable, dim the recognition of the primary conceptions regarding the defendant KEITEL, namely that whatever he, KEITEL, did, with which authority or organization he dealt or was in contact with, he always acted as a soldier, and it was always the general - or particular order of HITLER, which placed him in the foreground and sent him into action. The facts of conspiracy seem to me comprehensibly and logically in-

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compatible with the tasks of a soldier and with KEITEL's position as head of the O.K.W.

In all the cases where the statements of the prosecution have claimed conspiracy to be prejudice, the purpose of this conspiracy is an activity, performed by members of a gang departing from their normal and private activity. The result of this is - on the contrary - that any activity practised by somebody on the strength of his vocation or employment cannot be called conspiracy. In the case of a soldier it many be added that he does not act on his own initiative but in accordance with orders. A soldier might therefore well take part in a conspiracy, directed against the duties he has undertaken as a soldier but never can his activity within the framework of his military functions be designated as a conspiracy.

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The conduct of the war in the East affected relatively little the O.K.W., the WFSt included. When I say the O.K.W. I mean the Staff O.K.W. It is well known that HITLER as O.K.W., i.e. Supreme Chief of the Wehrmacht dealt himself with all matters concerning the conduct of this ideological war of his own and interfered in it. The army led, but HITLER was in steady and close collaboration with the Supreme chief of the Army and with its Chief of the General Staff, until December 1941 when, after having taken over the supreme command of the Army he also took over the direct leadership.

This personal union of a German High Commander of the Wehrmacht and Commander in Chief of the Army evidently led to many mistakes which resulted in the severe charges against the German High Command as Staff of the General High Command and its Chief of Staff General KEITEL.

KEITEL himself feels heavily enough the guilt of the whole complex of the war against Russia which he has frankly stated in the witnessbox. It is therefore not only understandable but also the duty of the defense to clarify KEITEL's responsibility for all these facts of the most terrible atrocities and incredible degeneration.

For the purpose of an easier understanding of these matters, which are often most complicated, I handed the affidavit of defendant KEITEL to the Tribunal (Document book II Exhibit No K 10) I refer to it without reading its contents.

It seems to me of importance to emphasise that from the very beginning the war against the Soviet-Union has been subject to three factors for its execution:

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1.) military operations and orders: Commander in Chief of the Army.

2.) economics: Four Year plan

3.) ideology: SS-organizations.

The German High Command (KEITEL) had no competent influence upon these three factors and no authoritative power. Neither can it be contested that in the course of his aforementioned truly anarchistic methods of work, HITLER, when all is said and done hold all the strings in his hands and used sometimes the German High Command for forwarding of his (HITLER's) orders, nor is it qualified to change the principal responsibility.

Concerning the wide extent of the material produced by the Soviet Prosecution, I can refer within the compass of my statement only to a comparatively small number of the documents. These documents however are symptomatic of many others. To begin with I will discuss the documents USSR 90, 386, 364, 366, 106, 407, all of which have been produced by the Prosecution for the purpose of proving KEITELS responsibility.

It will show, that in no single case is it dealing with orders, decrees or regulations issued by the German High Command (KEITEL), and that it has not been proved that the latter has even been informed thereof.

1.) The document USSR is a court-martial sentence against the German Generals BERNHARD and HAMANN and includes the following sentence:

"During the temporary occupation of the ORLOVA area.....German Fascist intruders committed bestial crimes in huge numbers against the peaceful populations and prisoners of war on direct orders of the rapacious HITLER Government and the Commands of the Wehrmacht, thus violating the rules of warfare established by International Law!....."

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The argumentation leading up to the verdict does not reveal proof for the claim that the "German Wehrmacht Command" - if this means OKW and the defendant KEITEL - ordered the crimes with which the court martial verdict is dealing. This is again one of the frequent confusions and an erroneous equality between the High Command of the Army and the High Command of the Wehrmacht. Statements on page 2 of the verdict seem to indicate this; it is said there;

> "The defendant, Lieutenant General BERNHARD ....."
> acted according to plans and instructions of the Army
> High Command ....."

This document, therefore, cannot furnish proof for the prosecution's contention that the defendant KEITEL is connected with the crime which is described in document USSR 90.

2.) In connection with the facts in the case dealing with "compulsory labor", the prosecution submitted in proof of its charge against KEITEL document USSR 36, a letter of Reich Marshal GOERING - in whom HITLER had vested general powers within the framework of the Four-Year Plan for this essential project - Plan Barbarossa-Oldenburg - as shown in the "Green Folder"

3.) Nor does the Report or the discussion of the Economic Special Purpose Staff East (Wirtschaftsstab Ost) of 7 November 1941 (USSR 386) touch the competency and responsibility of OKW, because Economic Special-Purpose Staff East had nothing to do with the OKW and the defendant KEITEL.

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This is also proved by the "Green Folder", the THOMAS document PS 2353 and KEITEL's affidavit - KEITEL document book II -, Exhibit No. K11,

The conclusion drawn by the Soviet-Russian Prosecution:
"Proof is established for the OKW Commander being primarily responsible for the mobilization of labor in the Reich"
is erroneous, if the argument is to establish responsibility on the part of the defendant KEITEL. If, on the other hand reference as Commander of OKW is made to HITLER, this cannot be contradicted.

4.) Document USSR 364 is a document of OKH (Supreme Command of the Army), signed by the Quartermaster-General of the Army WAGNER. It is seen by the distribution of the document that OKW was not even informed through the usual channels.

5.) Document USSR 366 as submitted, mentions the name of the defendant as having complained because:

"OT (TODT Organization) units operating in the vicinity of Lemberg paid local laborers a daily wage of 25 rubel and because OT availed itself of the services of local factories.

The prosecution's argument runs that:

"KEITEL writes to Minister TODT....."

The document which was submitted does not reveal this because it does not make any mention of such a letter. Inasmuch as the entire economic administration and the exploitation of the Eastern territories had been transferred to the Four-Year Plan, OKW had no relevant office for this problem.

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This becomes evident from the "Green Folder" just referred to, and from the Fuehrer Order for the Barbarossa-Oldenburg Plan.

Chances are that after discussion of the basic question during the conference on the situation, KEITEL once again received orders from HITLER to get into touch with Reich Minister TODT. This would then be one of the instances where the defendant merely served as instrument for the transmission of a HITLER order to the competent office without the matter being in any way within the competency of the OKW.

Furthermore, the information covered by the document does not show in how far this problem should be a charge on KEITEL.

6.) Document USSR 106 is a Fuehrer Order of 8 September 1942 and deals with the employment of prisoners-of-war, and the carrying out of the construction of field fortifications behind the front.

The heading of this Fuehrer Order reads:

"The Fuehrer"
"OKW. General Staff of the Army - Operations Section I
(Op.Abt.)"

The order was signed by the Army General Staff and issued by von HALDER. This proves unequivocally that the defendant KEITEL or the OKW were not involved.

7.) Nor is it possible to refer to document USSR 407 for the establishment of the defendant's participation. This document deals with the order given by a local commander, who refers to so-called OKW instructions.

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It has already been emphasized on several occasions that the OKW does not mean Keitel. It may however, also be easily possible, as no date of the supposed OKW Order was mentioned in Document USSR 407, that this is one of the numerous cases of confusion, especially as even in Wehrmacht circles the exact conception of the OKW was not known.

In any case the final conclusion of the Soviet-Russian Prosecution after submission of this document:

> "OKW and Keitel have not only ordered the mobilization of labor from the occupied part of Russia, but have worked directly in the execution of this order,"

is incorrect and has not been proved.

Now there is still a category of documentary evidence, which contains official communiques of the Extraordinary Commission for the Determination and Investigation of War Crimes and Crimes against Humanity. I have already at an earlier time dealt with the importance of official documents in the presentation of evidence, and pointed out their limited value as evidence.

If in this connection I discuss the official reports of the Investigating Commissions, then I do so because they have been presented in order to incriminate Keitel, but <u>actually</u> of themselves give proof that the accusation against Keitel and the OKW (Staff) are not based on any reasoning in <u>these</u> very weighty prosecution charges.

From the large number of documents concerning this I would refer to the following:

Document USSR 4 has been submitted to show that the Soviet-Russian

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population was exterminated through intentional infection with spotted typhus, and that this was a case of a planned spreading of typhus-epidemics amongst the Soviet population.

For this the following, amongst others, are named as the culprits (Page 10 of the document):

"The Hitler Government and the Supreme Command of the Wehrmacht", (Oberste Kommando der Wehrmacht).

In this case again it cannot be seen from the document itself on what concrete facts the Commission supports the guilt of the Supreme Command of the German Wehrmacht", and what military agency is described by the words "Supreme Command of the German Wehrmacht". However, since the Prosecution has presented this document as proof of the guilt of the defendant Keitel and the OKW, I establish that this document cannot be valid as evidence for an accusation against Keitel in this horrible charge.

Document USSR 9 bears the heading:

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"Regarding the Demolitions and Bestialities which the German-Fascist Invaders have committed in Kiev."

On page 4 it is stated:

By order of the German Supreme Command (Deutsches Oberkommando), German army units looted, blew up and destroyed the old cultural monument, the "Lavra of Kiev."

The following are described as responsible: "The German Government and the German Supreme Command" and all officers and officials listed by name.'

From the speech of the representative of the Prosecution and from the grouping:

"the German Government and the German Supreme Command"

it can be seen, that the OKW and Keitel are to be accused as having been responsible.

This document lacks any positive statement on which the Investigating Commission supports this judgment.

It is also shown here that the judgment of the Investigating Commission - in any case with reference to the defendant Keitel - is not basically supported.

Document USSR 35 is a report: "Regarding the material damage which the Fascist-German invaders inflicted on state plants and institutions, collective indutstries and citizens of the Soviet-Union."

This document states: "The German armies and occupation authorities, which carried out the directives of the criminal Hitler Government and the Supreme Commend of the Wehrmacht (OKW), destroyed and looted the Soviet-cities occupied by them. . . . . "

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To this it must be stated:

1.) The contents of this document do not show one single concrete "directive" of the OKW of Keitel.

2.) The OKW (Keitel) had no authority to give orders, and therefore could not issue directives,

3.) Therefore the findings of the State Investigation Commission, which for formal reasons would not be binding for the Tribunal, cannot be considered as justified, either, inasfar as the OKW and Keitel are concerned.

4.) No opinion is being expressed as to the remaining contents of the reports.

Document USSR 38 is entitled:

Communication of the Extraordinary State Commission for the Determination and Investigation of the Atrocities of the Fascist-German Invaders and their Accomplices.

Regarding atrocities of the Fascist-German invaders in the city of Minsk.

In this document it is stated on page 1.:

"Following instructions, which were issued directly by the German Government, the Hitlerite military authorities destroyed without any limitation scientific research institutes, etc. ..... they exterminated thousands of peace-loving Soviet-citizens and also prisoners-of-war."

Page 13 states:

"Responsible for the crimes committed by the Germans at Minsk ..... are the Hitler-Government and the Supreme Command of the Wehrmacht."

Nowhere in this document have either concrete or verifiable instructions or orders of the defendant Keitel or of the OKW been given.

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In the documents previously cited either KEITEL or the OKW has been mentioned as at least responsible. There are many such official reports, however, which have been cited in the presentation of the prosecution as proof of KEITEL's guilt and in which neither the defendant nor the OKW is even mentioned.

This is true of Document USSR 39. This document, bearing the title:

"What the Nazis did in Soviet-Estonia".

reports the atrocities of SS-troops in Esthonia.

With the exception of an order mentioned on page 3 issued by Lt.Gen. HASSE, commander of the 2nd Army Corps, which was under the OKH (High Command of the Army) no mention at all is made of the German Wehrmacht, but the SS is always being dealt with emphatically. There is no concrete assertion concerning the culpability of the defendant KEITEL and the OKW, as set forth in the indictment.

The same applies to the following collective documents:
USSR 8, 29, 45, 46 and 63. These documents lack any basis for the claims of the prosecution concerning the defendant KEITEL.

I can only request the Tribunal to examine the remaining documents in the same manner.

In closing, I must also point out document USSR 3 which contains an accusation against the OKW of extermination of Soviet-Russian prisoners of war and peaceful citizens.

After this document, had been submitted as evidence and after excerpts had been read from it in the session of 15 Feb 1946 I applied on 17 Feb 1946 to

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the Soviet-Russian prosecution.

Document USSR 3 namely was based mainly on the following orders:

1) Operational order No. 8 of the Chief of the German Security Police and Security Service (SD) with supplement of 17 July 41. (Supplement 2),

2) Operational order No. 14 of the Chief of the German Security Police and SD with supplement 1 of 29 October 41,

3) Order of the German High-Command of the Army No. 11 dated 7 October 1941 with supplement 2 of this order and reference to agreement of 28 April 1941.

From the above-mentioned orders verbatim quotations were given during the session. In the translation of document USSR 3 transmitted to me, obvious errors had taken place in re-translation.

Considering the great significance attached to the questions here involved and to the responsibility of the accused KEITEL, I requested the above documents with the indicated appendixes or supplements to be given to me for study.

I received neither a reply, nor the documents requested.

On 11 March 1946, I again applied to the Soviet-Russian Prosecution about these same documents, and wrote as follows:

On page 4 of document USSR 3 the following is quoted:

Paragraph 3:

"the formation of Special Commandos ("Sonderkommandos") is being carried out according to the agreements concluded on 7 October 1941 between the Chief Gestapo and the OKW. The Commando will..... act within the framework of the camp regulations in close cooperation with the camp commander and security officers." (Explanation of the instructions

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of 17 July 1941).

Para.5

"The OKW for their part have also pointed out in supplement No. 2 to the order of 7 October 1941: " 1) ..... " in the distribution camps behind the front, etc. ..... "the Special Commandos, created to carry out this task are subordinate to the deputies of the Chief-Gestapo, the commanders of the communications areas, in accordance with the agreement of 28 April 1941 , issued under "A".

The defendant KEITEL believes that there is an error in this quotation as OKW (Sup.Command of the Wehrmacht) has been mistaken for OKH (High Command of the Army).

I would be obliged to you, if you could let me have the "agreement" mentioned in Para. 3 between Gestapo and OKW dated 7 October 1941 and supplement No. 1 to the operational order of HEYDRICH of 29 October 1941.

I also request supplement No. 2 mentioned in Para. 5 to the order of the OKW of 7 October 1941.

Considering the fact that the case of defendant KEITEL must be brought up in about eight days, I ask you to act as quickly as possible on my request."

This letter also remained unanswered.

I ask the Tribunal to examine if document USSR 3 can be used as evidence against the OKW and KEITEL under the circumstances as set forth.

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The Economic spoliation of the Occupied Territories

(The Economic Armament Office - WiRüAmt in the war)

In the war against Poland, as well as later in the West(further extended on the basis of experiences in Poland) expert personnel trained in military economy were attached from the Armed Forces Economic Office (Wehrmachts-Wirtschaft) in the form of small staffs and detachments to the army groups and army high commands, as expert advisers and assistants in all military economic questions which resulted from the conquest and occupation of economically and industrially valuable territories.

The Economic-Armament Office, together with the WiRüAmt, prepared the organization of these expert groups and the technical detachments in advance organizationally.

By and large, they consisted of:

a) Expert advisers with the unit staffs (first called liaison officers of the WiRüAmt/ Economic-Armament-Office)

b) Reconnaissance Staffs for war economic important factories and raw materials.

c) technical detachments and formations for security, repairs, and protection from destruction of war essential and vital plants and supply installations.

This organization was prepared by the WiRüAmt (Economic-Armament Office) for the reason because it depended on expert research personnel from all three branches of the Wehrmacht and the civilian economy, as well as the "technical emergency aid" (Technische Nothilfe). The army completed the setting-up itself.

The organization was subordinated to the senior troop commanders in charge. Their employment takes place exclusively on the orders of the troop command, for which the expert adviser submitted suggestions from time to time to the unit

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staffs (the General Staff Ib or the Chief Quartermaster).

The missions of these technical detachments were:

a) Advising the leadership concerning the importance and significance of industrial plants and supply installations (power, water, electrical current, repair plants, mines etc.),

b) Protection of these installations from destruction by the enemy and our own forces, for example, stripping of the most valuable parts, plundering),

c) Utilization for the purpose of our own conduct of war for our own troops and population,

d) Examination of the war essential and vital plants and establishment of their productive capacity for our own use,

e) establishment of the raw material supplies of metals, ores, coal, fuels, etc. for the reindustrialization or our own use for our own conduct of war.

All functions with the exception of those mentioned under d) and e) served exclusively for the supplying of the fighting troops, the occupational troops, and the native population. The statistical collections d) and e) were reported through military channels to the competent offices at home (General Plenipotentiary for Economy, Four Year Plan, Minister of Armaments), which had to make disposition concerning use and utilization. <u>The Wehrmacht itself had no independent right of action.</u>

It is correct that (according to the THOMAS book 2353 PS) raw materials and also machines were removed to Germany, for the production of the implements of war as the prosecution charges, since both had served the enemy conduct of war and had to stop production.

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A military agency could not order the removal to Germany, because it had no right at all to dispose of "booty" of this sort. The three highest Reich authorities mentioned alone could instigate the removal on the basis of a general authority by the Fuehrer or a special order by Hitler to the Supreme Commander of the army. The KW and the Chief of the KW, as well as the Economic-Armament-Office, had no right of disposition and command outside of their own fields, as little as there existed an individual chain of command from the KW/Economic-Armament-Office to these detachments. The message and report chain went over the unit staffs to the OKH Quartermaster General, with whom the highest Reich authorities (Food, Economy, Armament Ministry, Four Year Plan) had representatives and reported to their departmental chiefs. Orders by the defendant KEITEL as Chief of the KW concerning utilization, use or seizures of economic goods have not been given; this follows from Document 2353 PS.
The unified leadership of the entire war economy in France and Belgium was then delegated to Reich Marshal GOERING as Commissioner of the Four Year Plan, by the Fuehrer Decree of 16 June 1940.
For the judgment of the responsibility, it is of significance that the staff of the Economic-Armament Office examined the problems which concerned the armament economy and utilization of economy in the occupied territories. The legal opinions, which were regarded for this as decisive, are assembled in document EC 344, and namely of the Foreign Department in the KW (Department Chief Admiral Canaris).

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Referring to Articles 52, 53, 54, and 56 of the Hague Convention of Land Warfare, it in explained in connection with total warfare that the "economic re-armament" must be regarded as belonging to the "war effort" (Kriegsunternehmung) and accordingly all industrial supplies of raw materials, half and finished manufactured goods as well as machinery, etc. are to be regarded as serving the war effort. Therefore, according to the viewpoint of the author, of this opinion, all these goods are liable to be seized and used - against compensation after the conclusion of peace - .

Furthermore, the problem of the necessity of war is examined and Germany's state of economic emergency of that time is already affirmed.

For the judgment of the defendant KEITEL this opinion is of significance insofar as the well-known foreign department under the responsible leadership of Admiral CANARIS still in November 1941 practically proved an opinion which justified the economic utilization of the occupied countries. That was the office which concerned itself with problems of international law and on which the defendant Keitel based his confidence.

An organization for all economic requirements, for surpassing the former organization, was created on the basis of the experiences in the West by Reich Marshal GOERING, through a General delegation of authority by the Fuehrer.

The chief of the Economic-Armament Office with State Secretary KÖRNER prepared this organization for Reich Marshal GOERING - without participation by the Chief of the KW - .

The Chief of the OKW has for this purpose put General THOMAS at the disposal of Reich Marshal GOERING. The Chief of the OKW did not acquire any influence at all on this organization and severed his own and the OKW's connection with it after Reich Marshal GOERING had received full powers and the OKW had put General THOMAS at his disposal.

General THOMAS thus acted alone in this connection, commissioned by Reich Marshal GOERING. The OKW and defendant KEITEL were neither under Reich Marshal GOERING's orders nor bound by his instructions. Defendant KEITEL was not represented in GOERING's Economic Staff and had nothing to do with the Eastern Economic Staff. (See THOMAS Book Page 366).

The execution of the work was centrally directed by the economic Operations Staff in Berlin as part of the Four Year Plan. The local higher command in the Eastern district was under the Eastern Economic Staff.

To this organization was also attached the Troops' Supply Department.

The OKW, and defendant KEITEL as chief of the OKW, never issued orders concerning the exploitation, administration or confiscation of economic property in occupied territory. This is revealed by the Book submitted by the prosecution, Document 2353-PS. On page 386 of this document, THOMAS, in summarizing correctly stated as follows:

> "The Eastern Economic Operations Staff under the Reich Marshal or State Secretary KOEHLER, was responsible for the whole economic direction of the Eastern area; the State Secretaries were responsible for departmental instructions; the Economic Armament Office was responsible for the reconstruction of the economic organization; the Eastern Economic Operations Staff was responsible for the execution of all measures.

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The same is shown by Document USSR 1e :

"Directives (of Reich Marshal GOERING) for the unified conduct of economic management in the zone of operations and in political administrative areas to be subsequently established."

This ought to prove that the OKW and KEITEL are clear of any responsibility for the consequences attendant upon carrying out the measures within the scope of the Barbarossa - Oldenburg operation.

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The French prosecution have charged defendant KEITEL personally with war crimes and crimes against humanity. The accusation concerns putting to death French civilians without judicial decision. In this connection, the cases of Oradour and Tulle were particularly emphasized. They are recorded in a report by the French Government (Doc.F. 236).
The French prosecution declared: "KEITEL's guilt in all these things is undoubted". (Page 3659 of the transcript).
In this connection, it is not my business to discuss the frightful happenings of Oradour and Tulle. As defense counsel for defendant KEITEL, I have to examine whether the assertion of the prosecution that defendant KEITEL bears any guilt or responsibility in these atrocious occurrences is founded.
You will understand that defendant KEITEL is particularly intent on producing evidence to the effect that he is not responsible for these terrible occurrences and furthermore that when such things came to his knowledge, he was anxious to have them cleared up in order that the actual offenders might be brought to account.
It is incontestable that KEITEL had no direct participation in these crimes. Any responsibility and guilt of the defendant can therefore be derived only from his official position.
No orders of any kind bearing KEITEL's signature have been submitted by the prosecution, so that whoever is guilty, KEITEL does not, at any rate, belong to the circle of those

directly responsible.

The horrible wrongs suffered by a large number of French villages are recorded in the Notes of General BERARD dated 6 July and 3 August 1944 (included in Collective Document F 673). I already pointed out, when this document was submitted, that by the submission of these notes of complaint alone, that is without simultaneous production of the replies, which are also in the possession of the prosecution, no objective picture can be presented of the facts as they are for a pronouncement on the guilt of defendant KEITEL. As defendant KEITEL, owing to his lack of authority to issue orders in the matter, cannot possibly be taken into consideration as the author of the orders which led to the complaint any responsibility and guilt of KEITEL's can therefore be proved only by the fact that he did not cause the necessary steps to be taken after being informed by the German Armistice Commission. Whatever KEITEL did or failed to do can be gathered only from the reply notes and from the stipulations of the OKW to the German Armistice Commission. Without the submission of these documents for every case, the Tribunal cannot assume either KEITEL's guilt or his responsibility to have been proved. Counter - evidence would indeed be impossible for defendant KEITEL even in this case, had not the French prosecution themselves submitted a document (F 673 - Letter of the OKW dated 5 March 1945, signed KEITEL) which was to serve as proof of KEITEL's individual guilt. This document is worded as follows and was read by the French prosecution at the session of 31 January 1946.

(Pages 3660/3661 of the transcript).

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Dr. Nelte

Final Pleading
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German High Command

F.H. Qu., 5 March 1945

WESt./ Qu. 2 (I) No. 01487/45 g. SECRET

Subject: Alleged killing of French nationals without trial.

German Armistice Commission

Group We/Ib No. 5/45 g

1) German Armistice Commission

Received: 17 March 1945.

2) Colonel West

In August 1944 the French delegation of the German Armistice Commissio. addressed a memorandum to D.W.St.K. (German Armistice Commission) describing in detail incidents leading to the alleged shooting without justification of Frenchmen during the period of 9 to 23 June 1944. Statements made in the French Note were almost entirely made in such detail that an examination by Germany was possible without any difficulty.

On 26 September 1944 the German High Command charged the German Armistice Commission with the handling of the case. Thereupon, the German Armistice Commission asked Colonel West to investigate the incidents and to take actio with regard to the representation of facts given in the French memorandum. On 12 February 1945 the German Armistice Commission was informed by the Judg of Army Group B, that since November 1944 the case was in the hands of Army Judge of Pz. AOH/6(armoured army AOH/6) and that Pz. AOK 6 (Armoured Army AOK 6) and 2. SS. Pz Division "Das Reich" (2nd Division "Das Reich" of SS Armoured Army) had meantime separated from the army group.

Handling of this matter calls for the following remarks:

The Frenchmen, namely the delegation of the Vichy Regime,

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have made the grave charge against the German armed forces of numerous cases of the unjustified killing French nationals, in other words of murder. German interest demanded a reply to this charge at the earliest possible moment. Considering the length of time which has elapsed since receipt of the French Memorandum, it should have been possible to take up at least some of the charges and to refute them through actual investigation, irrespective of subsequent development in military matters and the transfer of troups incidental thereto. If even a portion of the charges made had been refuted at once, the French people would have been shown that their entire statement are based on doubtful material; but because nothing was undertaken by the Germans, the opponents' impression must be that we are not in a position to answer these charges.

The manner in which this case was handled indicates that, perhaps, the still exists a great deal of ignorance on the importance to be attached to al reproaches against the German Wehrmacht, to counteract any enemy propaganda and to refute immediately any purported German acts of atrocity.

The German Armistice Commission is hereby instructed to continue handli this matter
/with all possible energy. It is requested to render any assistance possible and particularly to take all steps for the expedition of matters within its own sphere of action. The fact that PZ. AOK 6 (Armoured Unit AOK 6) no longer forms part of the forces of Colonel West is no reason to prevent continuing the necessary investigations in order to clarify and refute the French charges.

For information:

Army General Staff (Gen.St.d.H.)
Head Quarters Gen./Qu. (signed) KEITEL.

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This document shows:

1° Upon receipt of the French memorandum of complaint of 26 September 1944, OKW issued orders to the German Armistice Commission to investigate and handle this matter.

2) Thereupon the German Armistice Commission instructed Commander-in-Chief West to investigate the incidents.

3) Upon receipt of a letter from Army Group B, OKW expressed itself as follows:

"It was in the German interest to answer these charges at the earliest possible moment."

"The manner in which this case was handled indicates that perhaps there still exists a great deal of ignorance as to the importance to be attached to all reproaches against the German Wehrmacht, to counteract any enemy propaganda and to refute immediately any purported German acts of atrocity. The German Armistance Commission is hereby instruc to continue giving this matter attention with all possible emphases. It is requested to render any assistance possible and especially to ta all steps for expeditious handling of the matter as far as it regards your own sphere of action. The fact that Pz. AOK 6 (Armoured Unit AOK no longer forms part of the forces of Colonel West is no reason to prevent continuation of the needed investigation so as to bring light into and refute the French charges."

It may therefore be safe to say that it has been proved that the defendant Keitel, upon receipt of information, undertook with due ener such steps as were within the scope of his authority and ability as chief of OKW.

This eliminates the prosecution's contention in so far as it has assum the guilt of the defendant Keitel. At the same time, however, the han of this case by the defendant Keitel points to the conclusion that he acted in like manner in other cases.

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Dr. Nelte

Final pleading.

The hostage question.

War which is frightful even under orderly international law, becomes atrocious when the last restraints are removed.

Many terrible things have happened during this war, one does not know what chapter of this book of sorrows and tears is the saddest, in any case one of the saddest chaptens is the one of treatment of hostages.

In international law the question of treatment of hostages is controversial. The taking of hostages is almost generaly admitted. There can be no doubt, that even if taking hostages is assumed to be admissible under international law nothing has yet been said thereby as to their treatment. The treatment even more than the seizure of hostages must be placed on the one hand under the law of absolute military necessity, which cannot otherwise be met, and on the other hand, under the application of all possible guarantees to prevent the shooting of hostages on principle, without more ado. The primitive brutal handling of just this institution which is doubtful under international law and which usually affects the absolutely innocent, must be rejected.

Unfortunately this problem which seldom arose in previous wars between civilized people, acquired considerable importance during world wars 1 and 2. The cases taken into consideration previously and also in the army manual 2g (H.Dv.2g) (KEITEL Document-book, Exhibit No K 7) resulted from military necessity of the operating troops. As happened with so many things in this war, but especially due to the change in fields to which applicable theater of operations became

rear Echelon - finally there appeared a broadening and degeneration in the application of a principle which originally was indisputable according to international law.

The immediate connection with military necessity was absent, that is with military actions, in its place arose safefuarding of interests to which naturally belonged military safeguards, particularly of lines of communications between the front zone and home.

It must be said that this fundamental change ought to have been recognized, and ought to have been taken into consideration in the handling of the existing rules governing hostages. The degeneration in treatment of hostages was decisively influenced by the fact that civil-administrative and police organizations claimed for themselves one of the extreme means of soldierly warfare and often made use of it arbitrarily anywhere they wanted to break resistance, by arresting people without concrete individual or even presumptive guilt and by treating them from the viewpoint of reprisals. Collective arrests for individual offenses come into this category.

All these cases have nothing to do with the original facts in the cases of hostages, but as the word "hostage" is used for all these cases, the prosecution in many cases has attributed to the charge of the Wehrmacht a responsibility which it should not bear.

I request the Tribunal when judging this complex and when examining the responsibility of defendant KEITEL to take into consideration:

Dr.Ne.

Final pleading

1. The concept of hostages, the presuppositions for taking hostages and their treatment had become known to all Commando authorities and their offices in the Wehrmacht by the army manual regulation (H.Dv.2g) before the war, especially before the campaign in the West.

   The documents 1585 PS submitted by the prosecution itself (Discussions of the hostage question with the Luftwaffe) and 877 PS (the operation order of the army for the case "Yellow" and the attack in the West dated 29 October 1939) reveal, that special regulations had previously been given for seizure of hostages. Their application was justifiably transferred to the army offices and later to the military commanders who were subordinate to the army and never to the Wehrmacht High Command (OKW).

2. Nobody could be in doubt, according to the regulation (H.Dv. 2g), as to what authority the army commanders had and as to who had to make a decission on a possible shooting of hostages. No supplementary order or supplementary regulation was ever issued by the Wehrmacht High Command (OKW). The letter of FALKENHAUSEN (military commander in Belgium), dated 16 September 42 (document 1594-PS) mentioned by the prosecution and the report of this military commander (1587-PS) are not addressed to KEITEL, but correctly so to his superior office: the Army High Command (OKH) Quartermaster general. KEITEL received neither the letter nor the report.
   Whether HITLER received them in his capacity of Commander-in-Chief of the army and military superior of the military commanders, KEITEL does not know.

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Dr. Neite

Pleading

3. The OKW was not informed of the cases in which inhabitants of the occupied territories who were mistakenly and falsely described as hostages and treated without legal procedures.

4. If the hostages, without being connected with the plots and terror acts against the occupying power, were therefore held responsible for them without local or principle reference, then this is contrary to service regulations.

5. So far as the OKW or the defendant Keitel were asked by military agencies in individual cases, which were concerned with the questions pertaining to hostages, for example by the military commanders in France and Belgium, the evidence has shown that the "hostages," which were to be shot, were to be selected from the circle of persons who had already been sentenced to death by virtue of the law. However, so that this would not be recognized from the outside, it was to be announced, that hostages had been shot.

The French Prosecution has brought the OKW and Keitel in connection with this complex by means of document 389 PS, - the same as UK 25, a Fuehrer order of 16 September 1941, which was drawn up by Keitel. This document, whose contents are monstrous, does not, however, have anything to do with the question of taking hostages and the treatment of hostages. The word "hostages" does not appear in the text. From the subject and from the contents it can be seen that this deals with an order in line with combatting the resistance movement in the eastern and western war theater, and therefore is related to the basic principles of the so-called world philosophical war against the Soviet Union which has been dealt already at another place with and

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Dr. Neite

Pleading

condemned. When the communication of 16 September 1941 was addressed to the military commander in France by the High Command of the Army for information purposes, the latter had already decreed the so-called "hostages-law" (Document No. 1588 PS). According to this no causal-connection existed, as the French Prosecution has assumed, between the directives signed by Keitel and ordered by Hitler in Document PS 389, the same as UK 25, with the hostage legislation in the West. The latter had been decreed without collaboration or consultation of the OKW. The agency to which the military commanders in Frnace and in Belgium were subordinated was the High Command of the Army (OKH), therefore not the OKW; the agency which specialized in this matter was the Quartermaster General (in the OKH). With regard to this it must also be considered that at this period of time Hitler himself was the commander-in-chief of the army, whereby the already previously mentioned reference questions to the OKW can be explainhd. In reality, there were no reference questions to the OKW, but to Hitler as commander-in-chief of the army, which because of the personal union between Hitler as Supreme Commander of the armed forces and commander-in-chief of the army partially were routed through Hitler's working staff (the OKW). In this way, however, no competence and thereby no responsibility of the OKW and the defendant Keitel as chief of the OKW was established either.

In conclusion, I request permission to hand in some work to the Tribunal about the stand of opinions pertaining to international law with regard to the question of hostages for consideration in the examination of these facts in the case. I limit myself to reading the summarization of expert opinions and military practices:

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Dr. Neite

Pleading

"In summarizing it must be said concerning the question of taking hostages and the execution of hostages, that according to existing practices and probably also according to existing rules of international law, the taking of hostages in occupied territory is permissible under international law, insofar as the hostages are taken in order to guarantee the proper legal behavior of the enemy civilian population. According to the commentary by Maltzog which is decisive for the German direction of warfare, it is furthermore a necessity of form, that when hostages are taken according to unwritten international law (common law) it must be announced that hostages are being taken, and why. Above all, the taking of the hostages and the threat of execution must be brought to the knowledge of those for whose lawful behavior the hostages are to go bail. The question, whether it is permissible to execute hostages cannot be interpreted unequivocally. The German teachers of international law, like Meurer, the Englishman Spaight and the Frenchman Gorel, Funck consider them permissible in the most extreme emergency and therefore not contrary to international law.

As has already been stated above, the American practice also maintains that in case of absolute necessity, an execution of hostages can be justified."

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Final Pleading

Defense Counsel DR. DR. OTTO NETLE

for the

Defendant: Field Marshal, retired,

WILHELM KEITEL

Insertion to page 153

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A D D E N D A

to the matter of the taking of hostages and their treatment according to martial law

But the case is different in the event of illegal taking of hostages as reprisals. It is therefore, and in contradiction to taking hostages as reprisals as mentioned in I., designated as illegal because such taking of hostages does not constitute a reprisal against a breach of international law by the enemy state, but because it is done on account of behaviour of the population of enemy territory that is contrary to martial law. That is why it is often and more exactly called "Taking of hostages in occupied territory." This illegal taking of hostages has played an important part in World War I and in the recent war.

It is an axium absolutely recognised by international law that the population of occupied territory is bound to obey the occupying Power; it must obey its directives and orders and must avoid any hostile action against it. If the 3rd section of the Hague Decree for Warfare on Land does not explicitly state this, it is to be understood from the structure of this rule which does not contain any precepts for the occupying Power and the occupied population, but restricts itself to forbidding certain actions on the part of the occupying Power. In so doing, the point of view is that the right of the occupying Power is basically without any limits and that the LKO is only restricted by the bans to this absolute right contained in its Articles. But from the fact that the LKO does not contain a ban on taking of hostages we may conclude that--with the exception of hostile crimes by the population against the occupying Power--taking of hostages is allowed. Opponents of taking hostages have often objected that Articles 46 and 50 of the LKO indirectly forbid the taking of hostages.

Edict of the Hague convention concerning Warfare on Land dated 18th October, 1907 (RGBL 1910 p. 10)

Mentioned in the following pages as LKO.

H1251-0159

8) Article 46

L'honneur et les droits de la famille, la vie des individus et la propriete privee, ainsi que les convictions religieuses et l'exercice des cultes, doivent etre respectes.
La propriete privee ne peut pas etre confisquee.

Article 46

Family honour and rights, private property and the lives of individuals, as well as religious beliefs and the observance of them must be respected.

Private property cannot be confiscated.

Article 50

Aucune peine collective, pecuniaire ou autre, ne peut etre edictee contre les populations a raison de faits individuels dont elles ne pourraient etre considerees comme solidairement responsables.

Article 50

No collective penalty, pecuniary or other, may be levied against populations on account of individual acts for which they could not be held jointly responsible.

The German teacher of international law Meurer states:

"But Article 46 only contains the general rule and reckons that the population will behave correctly. Article 46 does not, of course, state that the basic rights are not to be affected by the population infringing international law, and consequently also human life in spite of conduct contrary to what is lawful, e.g. the life of franc tireurs should be respected. At the Hague Conference the German reservation on this score was recognised as justifiable and placed on the records.

But Articles 46 and 50 only apply to occupied territory. The remark of the Rolin Commission's Report, based on speeches at the Conference, at the 1st Hague Conference (III.46), that the stipulations of the 3rd section (Art. 42-56) must a fortiori also apply to invasion contains an obvious untruth. See my "Hague Peace Conference" (II 223). Finally, and above all, it must be stressed that special questions in dispute were neither desired to be settled nor could be settled by the general conception of Art. 46 and 50."

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3) Meurer "International law in wartime", Vol. II Berlin 1927 p. 22 0

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This opinion is shared by both German and Anglo-American literature on international law; thus Speight, among others, says:

"To ensure payment of fines or levies, hostages are often taken. According to custom it is forbidden to powers holding hostages to kill them, but against this presumed restriction we have a case in the Franco-Prussian War--to which I have referred in another connection--in which the Commander of Nancy threatened to shoot a number of workers if a Service Registration was not complied with. This case is an example of departing from the usual practice. The action of the German commander in this case is condemned by practically all jurists--including German authors like Geffcken--but it has the approval (as far as its actual value is concerned) of the teachings of the German General Staff ("War usages in war on land", p. 43). The death penalty is undoubtedly a drastic measure to obtain fulfilment of a demand but in view of the fact that bombardments are allowed (by the International Convention for War at Sea, by the Institute of International Law for War on Land) as a legitimate method of forcing a town to comply with a proper demand, it can hardly be stigmatized as contrary to teaching--provided that unusual circumstances are present and that all other means have failed--that the imposing of even this extreme compulsion should be forbidden by the usages of war. If it is contrary to Article XIVI to arrest a prominent citizen and to shoot him, then it is equally contrary to this article to bombard his house and to kill him accidently--and probably his wife and children as well--to attain the same object. Actually, the difference is only whether a man is killed with a rifle or a shell. But with the exception of certain very acute circumstances, such a measure would be quite unnecessary. 4)

The well-known English writer Oppenheim touches upon the same topic when he writes:

"There is likewise no doubt that hostages may be taken of the peaceful population." 5)

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4) Speight: "War Rights on Land", London 1911 p. 406 ff

5) Oppenheim Nelhair (?) "International Law" Vol II London 1926, p. 176, annotation 122.

Further British authors: Hall p. 411 Lawrence p. 354, Hershey p. 411 annot.

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A contrary opinion is presented in the latest work available on the same question by Ellen Hermer and Marina Salvin in the essay "The taking of hostages in theory and practice." But it is noticeable that there is contradiction in what you yourself cited from the British and American "Rules of Land Warfare" and the "Manual of Military Law", which will have to be referred to. French literature on international law takes the view, as far as can be seen at present, with the exception of Funk-Brentano and Sorel who even regard the killing of hostages as allowable by international law, that illegal taking of hostages as reprisals is unjustifiable by international law, and is united on this point. Morin expresses himself thus:

"In case of occupation, the occupying Power has no right, via-a-vis a peaceable population, to arrest them and punish them under the excuse of obtaining a guarantee for any liability of the State, with whom alone it is at war; because only combat-troops are the enemy and can therefore be taken prisoner. To agree to such an extraordinary right means the overthrow of basic differences, taken as basic matter by the advancement of civilisation and as they are today become customary between civilised nations. But to make such a right real would provoke a sacrifice to opposition, which would be legitimate; but this would lead to war against private persons. And if the enemy, by misuse of power, could take hostages in occupied territory, then the opponent could do the same as a reprisal. There would then be no more certainty nor safety for any inhabitant nor peaceful citizen." 6)

And further on he admits taking of hostages, in view of actual practice, in the following words:

In our opinion the withdrawal of liberty is already very extensive towards persons who have committed no mistakes, who were not exposed to the dangers of warfare and who, at the most, intervened for their country in a peaceful manner. The utmost that is permissible is to put them on the same footing, as regards their treatment and the restriction of their liberty, as prisoners of war, i.e. officers of the enemy army." 7)

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7) Morin, p. 278 (Annexe)

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That this is also admitted by the French army is seen from Fauchille, who states:

"The practice of taking hostages in war is also in use in the French Army because Art. 2 No. 2 of the French prisoners of war order of 21st March 1893 also regards hostages as prisoners of war. But according to the handbook of European laws of warfare, which was published by M. Jagsmet under the direction of the General Staff, the taking of hostages should only be allowed in exceptional cases of "absolute necessity." (p. 75) 8)

France also made use of this absolute necessity when it occupied the Ruhr. To recapitulate this point it should be stated that, apart from a few French teachers of international law, the taking of hostages in general is not recognised as contrary to law. But it is also stated that hostages, in the opinion of many, should be treated in every respect, if they are civilians, like officers taken prisoners of war (See Note 12a). And thus the teaching of actual procedure fits in with what is done in practice. In addition to the French handbook of military law which we have already quoted, the British manual of Military Law of 1929 (Annexe) considers the taking of hostages as allowed; equally the American Rules of Land Warfare of 1914 (Annexe). The latter certainly appears to have been altered, as will be seen from a comparison of the essay we have already quoted, by Ellen Hermer and Marina Salvin; but according to more recent conceptions as cited by them, illegal taking of hostages by way ofreprisals is permissible. 9)

A bitter controversy has arisen about the question as to whether hostages taken may be shot for the safety of the troops, in international law literature, because practice has not adopted an united point of view. In Germany, during and after World War I, the view was taken, especially as regards Belgium, that the killing of hostages taken in occupied territory was not contrary to international law, provided there was a certain attitude of the enemy

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8) Fauchille: "Traite en Droit International Public", Vol. I, Paris, p. 206.

9) From: The American Journal for International Law 1944.
The Taking of Hostages in THeory and Practice, p. ...(Annexe)
By: Ellen Hermer and Marina Salvin.

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civilian population. The Committee of Enquiry of the German Reichstag expressed itself as follows:

"Nevertheless, cases for the killing of hostages from extreme military necessity, as well as cases in the practice of warfare may be cited, in addition to important authorities on international law literature (see in particular the French international law jurists Funck-Brentano and Sorel in their work: "Precis du droit des gens", Paris 1900, pp. 288/289). In accordance with that, the Committee cannot admit that Germany infringed international law by killing hostages in the war against the Belgian people."

To this can be added the voice of the German teacher of international law Meurer:

"It is to be anticipated there will be the objection that any killing is punishable and that only one sentence in international law precludes punishment. But we seek in vain in the LKO for a sentence that allows the killing of troops in open warfare. As already the sentence that Hugo Grotius uses states, the contrary is rather the case. Everything demanded by the waging of war is permissible to those waging it, unless a ban is specifically put on it. And thus the LKO bases itself--as the Belgian Minister Beernaert in particular stressed--not on approvals but on what is disallowed, and power thus restricted then becomes legal right." 11)

It should again be pointed out that British literature, in particular, recognises the right to kill hostages, provided there is absolute necessity. (See Speight, quoted in the preceding pages). The often quoted essay by Ellen Hammer and Marina Salvin also states, pointing to American usage:

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10) Conclusion by the Committee of Enquiry of the German Reichstag on 7th March 1924 in: International Law in the World War, Vol. II, Berlin 1927, pp. 138/139 (Annexe).

11) Meurer in: International Law in the World War, Vol. II, Berlin 1927, page 220 (Annexe).

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"The Americans go on to state that "the parties or population committing an offence can be subjected to any retaliation measures that are in general legal." (ebenda, Par. 358d). Retaliation measures against prisoners of war are forbidden by the Geneva Convention of 1929. In the "Basic Laws of War on land" it is twice stressed that hostages are to be treated as prisoners of war (ebenda, p. 16 & 90). But "Hostages who have been taken for the declared purpose of providing a guarantee against illegal actions by enemy population may be taken and kept in captivity, punished or executed if the illegal actions continue in spite of that" (ebenda, Par. 358d).

Thus American practice admits the right to take hostages and kill them, both in the case of genuine and illegal reprisals.

French teaching denies the right to kill hostages, up to Funck-Brentano and Sorel, as mentioned above. (See Annexe). 12)

To recapitulate the question of hostages and the killing of them, it should be stated that according to current practice and current international law the taking of hostages are taken in order to guarantee proper conduct by the civilian population. According to the decisive commentary of Waltzog on German waging of war there is also a formal necessity that, according to unwritten international law (right by common usage), it must be publicly stated that hostages are being taken and for what purpose. Above all, the taking of hostages and the threat to kill them must be made known to those for whose conduct the hostages are being taken. 13)

The question as to whether hostages may be killed cannot be settled by only one interpretation. German teachers of international law such as Meurer, the Englishman Speight and the Frenchmen Sorel and Funck consider it permissible in extreme cases of necessity and consequently not contrary to international law.

As already explained above, American practice also maintains that in cases of absolute necessity the killing of hostages can be justified.

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12) See citation 14 in the before-mentioned place.

13) Waltzog "Rights of Warfare on Land", Note III, par. 2, Vol. 46.

H1251-0165

Nacht und Nebel

It may be said that there is hardly any order which during the proceedings of this Tribunal made a deeper impression on people's minds than the order "Nacht und Nebel". By this is meant an order which originated during the fight waged against acts of sabotage and the Resistance Movement in France. As a result of the departure of the troops in connection with the march against the Soviet Union, plots against the security of the German troops remaining in France, especially acts of sabotage against all means of communication increased from day to day. From this resulted the need for increased activity of counter-espionage offices, which led to proceedings and verdicts of military courts against members of the Resistance Movement and its accomplices. These sentences were very severe. In addition to capital punishment imprisonment also. During meetings for discussion of the situation, reports which arrived daily caused violent disputes with Hitler who, as always, was trying to find someone on whom to fix the blame and who, according to Hitler was in this instance to be found in the far too cumbersome handling of military justice. True to his spontaneously explosive temperament, he ordered the working out of directives to create a quick effective and lasting spirit of intimidation. He declared that confinement could not be considered an effective means of intimidation. When Keitel objected that not everyone could possibly be sentenced to death and that Military Courts would, furthermore, refuse to comply, he replied that he didn't mind about that. Cases where the offense has been established to be so serious as to impose capital punishment without lengthy Court proceedings, should continue to be dealt with as heretofore; that in other cases, however,

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where this was not the case, he ordered the suspected persons to be brought secretely to Germany while with holding all news as to what had happened to them, it being a fact that promulgation of sentences for penal servitude in occupied territory failed to have an intimidating effect in view of the amnesty at the end of the war.

Thereupon the defendant Keitel proceeded to consult with the chief of the Judge Advocate's Office of the Wehrmacht and with the chief of the Foreign Counter-Intelligence Office (Canaris), from whom also came the letter of 2 February 1942 (document UK 35) deliberations as to what should be done. When repeated remonstrances with Hitler to refrain from this system, or at least to relax the demand for complete secrecy failed to have any effect, a draft was finally submitted which became the Decree of 7 December 1941 (UK 35), which we have before us here.

The staff of experts and the defendant Keitel had succeeded in establishing the competency of the Reich Administration of Justice for the persons removed to Germany (see last paragraph of directives of 7 December 1941). Keitel had guaranteed this stipulation by means of the first Enactment-Decree governing the directives, in that he made the clarifying statement (last sentence in paragraph 1, of IV) that unless otherwise ordered by OKW, the case would be refered to civilian judicial authorities according to section 3, paragraph 2, second sentence. The defendant believed that in such manner he had at least ensured that the person involved would have the benefit of regular Court proceedings and that according to German provisions for accommodating and treating prisoners upon trial and prisoners serving a sentence, there could be no danger to life and limb. Keitel and his staff of experts believed that they could find confort in the fact that however cruel the suffering and the uncertainty endured by those concerned might be,

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nevertheless the life of the deported persons had at least been saved.

In this connection allusion is also made to the version of the cover letter of 12 December 1941. As already stated by the co-defendant General Jodl during his examination, there had been adopted a certain wording when the signatory wished to express his dissent with the order submitted. The cover letter begins with the words:

"It is the well-considered desire of the Fuehrer....."

The closing sentence runs:

"The attached directives.....comply with the Furher's interpretation."

Persons who received such letters knew from that wording that once again this was an order of the Fuehrer which could not be evaded, and they concluded therefrom that this order should be applied as mildly as possible.

The letter of 2 February 1942 comes from Foreign Counter-Espionage Office III (Amt Ausland/Abwehr) the original of which must have been signed by Canaris. At that time the defendant was not in Berlin where, after promulgation of the decree of 7 December 1941, the matter was dealt with further. Keitel, at the Fuehrer Headquarters, was not informed of the contents of that letter. In the light of the above remarks, the wording of the letter justified the assumption that a milder carrying out would be made possible through the provision that Counter-Espionage Offices were directed "to see to it that before an arrest is made evidence will be at hand fully sufficient to warrant the transfer of the perpetrator." It was also provided that before the arrest took place the competent military court must be approached in order to establish whether the evidence were adequate.

H1251-0168

In Germany the transfer was to be made to the Reich Administration of Justice. Sufficient proof for the correctness of the assumption of the defendant KEITEL is found in the fact that in view of the attitude of this Admiral which is sufficiently known to the Tribunal, Canaris would never have ordered the transfer to the Gestapo.

As already stated, the defendant KEITEL did not know of the letter of 2 February 1942.

Although the defendant KEITEL believed that he had achieved everything possible to safeguard those involved, the "Nacht und Nebel" decree - as it came to be termed later - caused him great mental anguish. KEITEL does not deny that this decree is not compatible with International Law, and this was known to him.

What KEITEL denies, however, is that he knew, or that prior to the Nuernberg trial he knew, that after arrival in the Reich the persons involved were imprisoned by the police and then transferred to concentration camps. This was contrary to the meaning and purpose of that decree. The defendant KEITEL could not learn anything about it because after the persons involved were turned over by the competent Law Lords of the Military Courts to the competent judicial authority for transfer to Germany - to be turned over to the Administration of Justice - the competency of the Wehrmacht ceased, unless the case involved proceedings by a Military Court. The defendant KEITEL is unable to explain from personal information how it happened that such a great number of persons were brought into concentration camps to experience a treatment described as "N N" such as was described by witnesses who appeared here. Results obtained through evidence presented to this Tribunal

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lead to the assumption that without so informing military authorities, police authorities indicated as "N N" prisoners all politically suspicious persons who on the basis of political measures were removed from occupied territories to Germany, to be placed in concentration camps. According to evidence, persons held in "N N" camps were primarily people who had not been sentenced, after formal proceedings by Military Courts in occupied territories, to be brought to Germany.

It therefore becomes evident that the police authorities in occupied territories made use of this decree as a general and unrestricted charter for deportation, exceeding every imaginable measure and regardless of the prerogatives of the Military Authorities alone, and the rules of procedure imposed upon them.

The fact that such a situation was at all possible in occupied territories without the knowledge of the Wehrmacht authorities can only be explained by the fact that as a result of the appointment Senior of/SS and police chiefs, the carrying out of police duties was withdrawn from the military authorities, and that these higher SS and Police chiefs received their orders from the Reich leader SS.

At no time were the Reich leader SS and Senior SS and police chiefs given the right by OKW to make use of the decree, intended to be used as a police executive measure by the Wehrmacht alone. The decree was valid only for the offices of the Wehrmacht in whom judicial authority had been vested, and its wording was explicit and restricted along that line.

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The letter of the German Armistice Commission of 10 August 1944 (document 843 PS) proves that OKW had indeed no knowledge of this improper application of the decree of 7 December 1941. It says therein:

> "...that the basis for arrests seems to have undergone a change in that, in the beginning, individual incidents and violations of law or attacks on the Occupation Power were involved;- in other words it meant the apprehension of elements who had been definitely active in certain cases (and who were liable to punishment according to the Hague Convention (Hague LKO) while, at present, there are also numerous persons being deported to Germany who because of their anti-German sentiments are being removed from France as a precautionary measure."

Under Figure 4 that letter reads as follows:

> "A prerequisite for application of the above-mentioned decree is that the persons arrested will be made the subject of judicial proceedings. There seems to be reason for assuming that because of the number of cases, especially within the compars of precautionary measures - such proceedings are now frequently being dispensed with and the prisoners are no longer held confined in investigation or penal institutions of the German legal authorities but in concentration camps. Also in that respect an essential change has taken place as compared with the original provisions of the decree."

In the reply of OKW dated 2 September 1944 - signed by Dr. LEHMANN, (chief of the OKW Judicial Department) explicit reference is made to the directives for the Fuehrer decree of 7 December 1941, the so-called NN-decree. In it nothing is said that the original presuppositions

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for deportation to Germany were changed.

This reply, however, was sent from Berlin, without the knowledge of the defendant KEITEL; the letter also of the Armistice Commission was evidently sent to Berlin. The We Re office was in Berlin. KEITEL himself was at the Fuehrer Headquarters and learnt nothing of the exchange of correspondence.

It should be pointed out that it was a grave sin of ommission not to have immediately replied to the letter of the German Armistice Commission of 10 August 1944 and to explain that this was a case of improper application of the decree of 7 December 1941 and the directives issued relative thereto. An investigation should have been initiated at once so as to take to task those responsible for this abuse.

In so far as the Tribunal regards HITLER's military staff as guilty, the defendant KEITEL takes the responsibility within the extent of his responsibility as chief of the OKW.

Dr. Nelte

Final Pleading

The defendant KEITEL is accused by the prosecution of having participated in the deportations for the purpose of labor commitment. In this connection, KEITEL declares, that in conformity with his jurisdiction he did not have anything to do with the procurement, recruiting and conscription of people in the occupied territories, nor with the assignment of the labor forces thus procured, for the armament industry. Co-defendant SAUCKEL gave the following testimony as a witness on 29 May 1946 (Page 10484 of German Transcript):

Question: You mean by that, that the OKW and the defendant KEITEL had no functions whatsoever appertaining to the matter of procurement, recruiting and conscription of labor forces in the occupied territories?

Answer: He had no function whatsoever appertaining to this matter. I got into touch with Field Marshal KEITEL, because the Fuehrer frequently charged me to ask Field Marshal KEITEL to transmit his orders by phone or by instructions to the Army groups.

Question: - (Excerpts)- Did the OKW and in particular KEITEL as chief of the OKW have any function appertaining to the question of labor commitment in the homeland?

Answer: No; because the commitment of workers took place in the economic branches for which they had been requested. They had nothing to do with the OKW.

During the cross examination by General ALEXANDROV. documents were presented, which according to the opinion of the prosecution are to prove the participation of KEITEL and the OKW. In this connection it must be examined whether and

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in what way the OKW and Keitel had participated in the sphere of duty of defendant Sauckel as General Plenipotentiary for Labor Commitment (GBA). Document USSR-365 presented by the prosecution contains the basic provisions concerning spheres of tasks and powers of the GBA., the decree of 21 March 1942 about the appointment of Sauckel as GBA., the order of Goering as commissioner for the 4-Year Plan dated 27 March 1942, the program for labor commitment, and the task and solution, as imagined by Sauckel.

These documents give expression to the relationships and contacts of the GBA. with many offices. These relationships and contacts vary qualitatively.

Clear is the jurisdiction and the official channels in the sphere of tasks of the GBA.: he is the spokesman for the 4-Year Plan (No.3 order of 27 March 1942) and he was therefore subordinate to Reich Marshal Goering and Hitler, who was identical with the 4-Year Plan. The relationships and contacts of the OKW, or Keitel with the GBA. and his sphere of tasks according to the outcome of the evidence (testimony of Keitel, Sauckel and the documents) were as follows:

The replacement system for the whole Wehrmacht was under the juridiction of defendant Keitel in his capacity as Chief of the Supreme Command of the Armed Forces (OKW). Losses at the front were reported to the OKW by each individual branch of the Wehrmacht and at the same time replacements were requested.

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On the basis of these requests, KEITEL submitted a report to the Fuehrer, according to which replacements had to be procured for the troops of the various branches of the Wehrmacht at certain designated times by the service commands through their replacement inspectorates.

The replacement inspectorates consequently called the recruit year group or beyond its drafties who had been deferred up to that time. With the war progressing, the result was almost invariably for instance that the Armament Ministry (for the deferred employees of the armament industry), the Ministry for agriculture (for the deferred employees of agriculture), the Transportation Ministry (for the deferred employes working for the Railroad) etc; made the greatest difficulties for the demands of the replacement authorities, and protested against them.

They pointed out that the tasks of the various departments would have to suffer dangerously if the deferred employees were removed without further ado. The competent Minister requested, that before the release of deferred employes, new workers should be procured to make up for those released.

Therefore, the matter was referred by way of the labor offices to the General Plenipotentiary for Labor Commitment (GBA), whose task it was, to procure

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the necessary man power for the domestic labor commitment required. The defendant SAUCKEL as GBA., who personally did not have at his disposal, except for special deputies, an independent organization of his own for the recruiting, procurement and possible conscription of labor forces was therefore forced to get in touch with the competent authorities in the occupied territories for the execution of his task.

a) In the occupied territories of the civil administration (Holland, Norway, East), it was the Reich Commissioner who had to assist SAUCKEL.

b) In the territories under Military Commanders (France, Belgium to the Balkans) it was the General Quartermaster of the Army.

c) In Italy it was in highest instance the accredited ambassador RAHN.

This is obvious from the decree of 27 March 1942.

GBA. SAUCKEL, before he became active in the execution of his task in the various territories, turned invariably to HITLER, whose subordinate he was with respect to the 4-Year Plan, in order to obtain through his instructions the necessary backing by the local authorities. This was done in such a way, that the order was issued to the local authorities to give SAUCKEL the assistance which he considered necessary for the execution of his task. The defendant KEITEL was not present at such discussions between HITLER and SAUCKEL. The defendant KEITEL had no jurisdiction or competence in these questions. However, somebody had to inform the local authorities about HITLER's orders, and the result was that HITLER who did not recognize any difficulties of jurisdiction, told the next best man to inform the local authorities about SAUCKEL and to point out HITLER's wish to grant him all the necessary assistance.

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These "next best" were either KEITEL for the military administrations of the occupied territories or Dr. LAMMERS for the territories under civilian administration.

This was the contact which existed between KEITEL and SAUCKEL in this matter. How in detail the recruiting or other procurement of labor was carried out, was not within the competence of the OKW. The latter did not receive any reports on the matter either. The interest of the OKW was exclusively limited to the fact that the required number of soldiers were placed at his disposal through induction by the replacement authorities. In particular, the OKW and the defendant KEITEL had nothing to do with the commitment of labor of the workers procured by the Plenipotentiary General for Labor Commitment into the war economy, but rather this was solely the business of the labor offices where the firms requiring labor of the economy, requested the workers deemed necessary.

1.) The name of KEITEL stands at the beginning of SAUCKEL's activity, as submitted by the prosecution, because KEITEL was co-signor of the Fuehrer decree concerning the General Plenipotentiary for Labor Commitment (Document USSR 365). From the repeated reference of the prosecution to this fact the conclusion must be drawn that it apparently sees in this co-signatory act of the defendant KEITEL the beginning of a chain of causes, at the end of which stood such frightful happenings as were presented here.

To this I refer to the significance expounded in another place of the co-signature by KEITEL as chief, of the OKW of such decrees of the Fuehrer. This fact, which penally cannot be considered as determinative is also not a guilt, because of the lack of conception of the events occurring during the further course of events.

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2. If the Fuehrer's decree of March 1942 provides the legal origin of the General Plenipotentiary for Labor Commitment (GBA), the first step in the participation of this official is also connected with the name of KEITEL as head of the OKW, as the personnel replacement matters were subordinated to him and he made his requests for replacement of losses at the front to the subordinate military replacement offices. Here also the same applies as in 1, as neither an appreciable determinative effect nor a penal fault are involved.

3. Owing to the situation resulting from the shortage of manpower, there came into being a purely factual connection between the military personnel requirements and the requirements of the economic replacement of workers, without KEITEL coming thereby in contact with the G.B.A. either as regards competence or orders.

SAUCKEL confirmed the statement of KEITEL that the OKW had nothing to do with the recruiting, levying or otherwise procuring of labor, nor with the commitment of the labor procured to German economy (German Minutes of May 29th,1946).

Now the French prosecution, during the cross-examination of SAUCKEL, has submitted four documents tending to prove the active participation of the OKW and of the defendant KEITEL in the deportations. These are documents 1292 PS, 3819 PS, 814 PS and 824 PS.

The first document is a report of the chief of the Reich Chancellery Dr. LAMMERS regarding a conference with HITLER, during which the question of procurement of labor for 1944 was discussed. The defendant KEITEL took part in this discussion. Annexed to this report a letter from the defendant SAUCKEL of 5 January 1944

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is reproduced in which the latter summed up the results of the conference of January 4th and proposed a decree of the Fuehrer. I quote the following parts therefrom.

.....

5. The Fuehrer pointed out that it was necessary to persuade all the German offices in the occupied territories and in the allied countries of the necessity of taking in foreign labor, in order to be able to support unanimously the General Plenipotentiary for labor commitment in carrying out the required organization, propaganda and police measures.

.....

2. The penaltimate paragraph:

The following offices should in my opinion receive the decree in the first place:.....

1. .....
2. .....
3. The Chief of the OKW, General Field Marshal KEITEL for instructions to the military commanders in France and Belgium, to the military commander South-East, the plenipotentiary General accredited to the Fascist Republican Government of Italy, the chiefs of the Army Groups in the East.

.....

The document therefore proves:

a) that Field Marshall KEITEL took part in a conference, without stating his point of view on the problem of labor procurement,

b) that the Fuehrer decree was to be brought to the knowledge of Field Marshal KEITEL for the purpose of instructing the military commanders.

What defendant KEITEL admitted as to his points of contact with this question is thereby confirmed.

The 2nd and 3rd documents refer to a conference in the Reich Chancellery on July 11th, 1944, in which Field Marshal KEITEL took no part.

Now the French Prosecutor made the statement (page ..... of the German Report) that the teletype (doc 814 PS, 1516 PS) is an order of Field Marshal KEITEL to the military commanders to carry out the decisions of the conference of July 11th. Mr. HERZOG has

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said in this connection that KEITEL's order was dated July 15th,1944. A cursory examination of the document - a photostat - shows that the document concerned is a teletype of July 9th containing an invitation from the chief of the Reich Chancellery Dr. LAMMERS to a conference on July 11th, which KEITEL transmits to the military commanders.

The conclusions of the Prosecution, based on this document, are therefore also invalid, but the document is also interesting from another point of view:

It states therein verbatim:

" The following directives are for the instruction of the military commanders or their representatives:

> Present situation requires using every possible means towards procuring additional labor, as all armament measures benefit in first place the fighting troops. On the other hand any apprehension regarding internal troubles, increasing resistance movement and so on must be set aside. Every help and assistance is to be given the G.B.A. I refer to my directives for the collaboration of the Wehrmacht in the procurement of labor from France (OKW/West/Qu (Verw.1)/2 West No. 05201/44 secret.-

The defendant KEITEL requested me to call the attention of the Court to this method of expression for the following reasons. Numerous documents bearing the signature "KEITEL" have been submitted here. According to KEITEL's attitude, already explained, which excluded any show of authority, he never used the "I" form in his communications or transmission of orders./The Prosecution only submitted one other teletype of the defendant, apart from this document, in which the "I" form occurs. Considering the many documents which confirm this admission of KEITEL, his statement that here the transmission of an order of the Fuehrer was in question must be believed, also that the style of wording which I quoted corresponds to an order from the Fuehrer.

General WARLIMONT (Doc.3819 PS) refers, during the conference of 11 July, expressly to a "recently issued Fuehrer order", the contents of which he reproduces exactly as contained in the teletype directive with the signature "KEITEL".

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Important as confirming this evidence of the defendant KEITEL is likewise the newly submitted document 824 PS - RF 1515. This is a letter of July 25th,1944, from the Commander-in-Chief West (von RUNDSTEDT), who in the meantime had become the Chief of the military commanders in France and Belgium. It is said therein that:

"by order of the Fuehrer the demands of the G.B.A. and of SPEER are to be fulfilled",

furthermore that in the event of evacuation of the battle area, measures must be taken towards securing fugitives etc. for labor; finally that reports must be sent in to the OKW regarding the measures taken..

The reference to the Fuehrer's order shortly after July 11th shows as well as WARLIMONT's statement, that there exist no directives from KEITEL or the OKW.

It can be considered therefore as proved that neither KEITEL himself nor the OKW had any part in measures to levy or recruit labor. The OKW was the office in charge of transmitting the orders which HITLER, as the superior of SAUCKEL wished to forward to the military commanders; it had no competence and no legal responsibility.

It is not the same in this complex as in the spheres that are within the administrative competence of the OKW, as there existed in this sphere at least a specialized function which included the possibility of voicing doubts.

In the sphere of labor procurement and labor commitment, the points of contact with SAUCKEL's activities are the following:

1. KEITEL was co-signatory of the Fuehrer's decree of March 21st,1942 concerning the appointment of the G.B.A.

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2. He has transmitted HITLER's orders to support the activities of the G.B.A. on the basis of special instructions to the local military authorities of the occupied territories.

Now, at the session of 2 February 1946 (Page 3761 of the German minutes) the French prosecution has, in the matter of the deportation of the Jews within the scope of defendant KEITEL's responsibility, stated the following:

" I shall subsequently speak about the order for the deportation of the Jews and I shall prove that this order came from a joint action of the military government, the diplomatic authorities, and the security police in the case of France. It results from this that

1.) The Commander - in - Chief and

2.) the Reich Foreign Minister and

3.) the Chief of the Security Police and Reich Security Head Office (RSHA),

these three persons, were bound to be informed of and bound to have agreed to this action, for it is clear that by their function they must have known that similar measures, which concerned important affairs, were taken and also that the decisions were taken jointly everytime by the staffs of three different administrations.

These three persons are therefore responsible and guilty..."

If you examine the very thorough individual handling of this item indictment (on page 3910 of the German minutes), you will establish that the OKW is <u>not</u> mentioned and that no document is produced which originates either from the OKW or from the defendant KEITEL. It follows from the KEITEL affidavit, Document Book 2, that the military commander for France, who is mentioned several times, was not placed under the OKW.

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Now, the prosecution has, in the handling of this question, attempted to prove the cooperation of the "Army" as Mr. JAURE says, with the Foreign Office and the Police. They believe they can put this cooperation to the account of the highest authorities, i.e., the OKW, in the case of the Army, and therefore KEITEL. This production of evidence is erroneous. In order to make that clear, I must point out that there was a military commander in France. This military commander was invested with civil and military power; he represented the non-existant state power and therefore had police and political functions besides military tasks. The military commanders were appointed by the OKH and received their orders from the latter. As it follows from this, there ex existed no direct relations with the OKW on this question. Since defendant KEITEL, as chief of the OKW was not placed above the OKH, there exist likewise no indirect relations of either subordination or authority.

What Mr. FAURE has said at this point is unfortunately true:

> "In France, a plurality of jurisdictions manifested themselves, with mutually divergent and even contradictory tendencies which overlapped each other or went counter to their own authority."

Actually, the OKW and defendant KEITEL have nothing to do with the Jewish question in France, with the deportation to Auschwitz and other camps; they had neither commanding nor controlling authority and therefore no responsibility.

The fact that the letter K. in the telegram, dated 13 May 1942 (Document 1215 F) was completed to mean KEITEL is indicative of the contention adopted by all prosecuting parties, concerning the presumptive implication of the defendant KEITEL.

Fortunately, the French prosecutor has corrected this and cleared up the error. (Page 3922 of the German transcript).

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The Prisoner of War Question.

The fate of prisoners of war has always stirred the feelings of men.

It has been the endeavour of all civilized nations to give the soldiers who fell in the hands of the enemy those reliefs which could be made compatible with the interests of warfare. It has been considered as one of the most important advances of civilization to have achieved an agreement in that case in which the nations were opposed in a mortal clash. The distressing incertitude over the fate of these soldiers seemed to be bridged over, their humane treatment guaranteed, the dignity of the disarmed opponent assured.

Like so many things, our belief in this advance of human society has begun to waver. Although this belief is still formally upheld - as it has been once and for all by the solid resistance of the general officers - , we must nevertheless admit that a brutal policy, oblivious to the Nation's own sons and of advancing but its own striving for power has in many cases disregarded the sanctity of the Red Cross and the unwritten laws of humanity.

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The treatment of the responsibility of the defendant Keitel in the general compl of the prisoners of war system comprises the following individual problems:

1) The general adjustment of the treatment of prisoners of war, the German legislation on the prisoners of war system;

2) The authority over the prisoner of war camps, divided into Oflag (officers' camps), Stalag (enlisted men's camps) and Dulag (transit camps);

3) The supervision and control of the legislation and its administration.

4) The individual cases which have been brought before the court in the course of the indictment.

As the organization of the prisoner of war system has been set forth in the course of presentation of argument, I can restrict myself to setting forth that the Wehrmacht High Command (Keitel), within the scope of his tasks as War Minister in accordance with the decree of 4 February 1938 by order of Hitler was competent and to that extent responsible:

a) for the ministerial right to issue ordinances within the entire local and professional range, partially restricted by co-work and co-responsibility in the matter of using the prisoners of war as laborers;

b) not authorized to have command over prisoner of war camps and the prisoners of war themselves, competent to allocate on a large scale to the Corps Area Commanders the prisoners of war arriving within Germany proper;

c) for the general supervision of the camps within the range of the Wehrmacht High Command (except for those within the range of the zone of operations the rear-army area, the area of the military commanders, the Navy and Luftwaffe prisoner of war camps).

The competent office for this in the Army High Command was the "Chief of the prisoner of war system", who was several times made personally responsible by the prosecution. The defendant Keitel attaches importance to the fact that the Chief of the prisoner of war system was his subordinate over the general Wehrmacht office (ueber das allgemeine Wehrmachtsamt).

Dr. Nelte

Final Pleading

This proves the self-evident responsibility of the defendant Keitel in this domai even in those cases in which he supposedly did not sign orders and decrees personally.

The basic provisions for the treatment of prisoners of war were:

1) The service regulations issued by the Chief of the Wehrmacht High Command within the scope of the normal mobilization preparations and set down in a number of Army, Navy and Luftwaffe publications.

2) The stipulations of the Geneva Convention special mention of which was made in the service regulations.

3) The general decrees and orders which became currently necessary.

Regardless of the treatment of Soviet-Russian prisoners of war, who were subject to regulations which were different on principle and to which I shall return in particular , the provisions of the service regulations which corresponded to international law,that is the Geneva Convention, were authoritative. The Wehrmacht High Command exercised supervision over the strict observance of these Army service regulations through an inspector for the prisoner of war system and after 1943 through a further inspectory board, the inspector-general for the prisoner of war system."

As further inspectory bodies may be counted the representatives of the protecting powers and the International Red Cross, which no doubt submitted to the various governments reports on the results of their inspections of and visits to the camps - in accordance with the provisions of the Geneva Convention -. No such reports have been submitted here by the prosecution; I shall come back to the charges brought in by the French prosecutor.

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Dr. Nelte
Final Pleading

The fact, however, that the British and the American Prosecutions, for example, have not submitted such reports may well permit the conclusion that the protecting powers did not determine serious violations with regard to the treatment of the prisoners of war in camps.

The treatment of prisoners of war, which during the first few years of the war did not lead to complaints of a serious nature with the western powers- I except individual cases like the Dieppe case - became increasingly difficult for the OKW from year to year, because political and economic considerations gained the strongest influence in this sector. The Reichsfuehrer-SS tried to get the prisoner of war system into his hands. The struggles for power which were caused by this from October 1944 on had the result, that Hitler turned over the prisoner of war system to him ostensibly because the Wehrmacht had shown itself too weak, and that it had let itself be influenced by considerations based on international law.

Another important factor was the constantly increasing influence caused by a rising labor shortage, which was exercised by the Mobilization of Labor and the armament sector on Hitler and which was exercised over him on the OKW.

The Party-Chancellery, the German Labor Front and the Ministry of Propaganda likewise were included in this actually purely military question. The OKW was engaged in a constant struggle with all these agencies, which for the most part had more influece on Hitler than the OKW.

All these circumstances must be taken into consideration, if one wishes

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to understand and value the involvement of the defendant Keitel correctly. Since he personally had to carry out the functions "by order of," since Hitler always kept the problem of the prisoner of war system under his personal control because of the previously described reasons, the defendant Keitel was almost never in a position to voice his own, i.e. military misgivings against instructions and orders.

The treatment of French prisoners of war.

As the result of the agreement of Montoire, the key word for the French prisoners of war was "collaboration." Their treatment moved in the direction outlined by it, which through discussions with Ambassador Scapini led to considerable improvements for them. In this connection I refer to the answers to the questionnaire given by Ambassador Scapini, who states amongst other things:

"It is correct, that General Reinecke examined the questions at hand objectively and without hostility, and that he attempted to regulate them understandingly, when they depended on his authority alone. He maintained a different attitude when the pressure exercised on the OKW by the Labor Service and sometimes by the Party made itself felt."

The prisoners of war used for labor were scarcely guarded. French prisoners of war used in the country had almost complete freedom of movement. By virtue of the direct understanding with the Vichy-government, considerable mitigations existed to the rules of the Geneva Convention, after their repatriation by virtue of the armistice-provisions had very considerably lowered the number of the original prisoners of war. In order to mention only several

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instances:

1) Release of all prisoners of war born in 1900 and older to their homeland,

2) Release of fathers of families with numerous children and widowers with children to their homeland.

3) Considerable alleviation of the mail and parcel traffic: increased German subsistence in the officers' camps and enlisted personnel camps by establishing institutions for spiritual entertainment and physical welfare of the prisoners of war.

4) For officer candidates, facilitation of their further training in their civilian occupation and care by a French General (Didelet).

As Ambassador Scapini himself has testified, he and the members of his delegation had complete freedom of writing and movement with and in all camps and labor detachments, if not special military reasons did not force limitations in individual cases. The members of the delegation were able to speak to their prisoner comrades privately, like every representative of a protecting power, and they were particularly able to make detailed inquiries about conditions with the French camp elder or the trustees, who were elected by the prisoners of war themselves. In addition to this, officers who had been selected by him personally were placed at his disposal as his assistants.

These subsequent regrettable occurrences, which have been presented by the French Prosecution here, stood in connection with the deterioration of the political and military situation. One of these occurrences was the escape of General Giraud, which Hitler used, in spite of all counter-reasoning presented to him by the OKW, to have measures against the French generals and officers increased in severity. The second decisive incident was the Allied invasion of Africa, which led

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to a general unrest and to numerous attempts at escape. Finally at the time of the final stage of the war, measures were arrived at which can only be explained by the - I would call it catastophic-morale.

In examining the responsibility of the defendant Keitel it must be considered that he did not possess any direct influence on the occurrences in the camps and places of labor. His responsibility can only be determined if it is proven that he had caused a lack of the necessary supervision, or still more, that no intervention had been instituted after knowledge of such occurrences. In this respect, however, there is no proof of guilt of the OKW.

The French Prosecution, in the charges against the defendant Keitel, has presented a note of Ambassador Scapini to the German Ambassador Abetz of 4 April 1941 under the collective number 668 F. This refers to the retaining of French civilians in Germany as prisoners of war. This document states on page 5:

> "In order to facilitate the examination of the categories to be released, I am transmitting enclosed a summarized chart. I am also enclosing the copy of the note of the German Armistice Commission No. 178/41 of 20 January 1941 which refers to the decision of the OKW to liberate all French civilians, who are being treated as prisoners of war.
>
> I hope that the execution of this decision will be expedited through this report, which I have the honor to submit to you."

I have asked the French Prosecution, to pass on to me the note of the

He stated to the generals that the Soviet-Union felt equally free from all stipulations which had been created by the Geneva convention for the protection of prisoners of war. One must read the decrees of the 8 September 1941(EC 338, USSR 356) in order to understand clearly HITLER's attitude. In the official document of the foreign intelligence office (Ant/Ausland/Abwehr) of 15 September 1941, rules were laid down which were to be observed according to international law, concerning the treatment of prisoners of war, even if the Geneva convention is not valid between belligerents.

The defendant KEITEL has testified on the witness stand that he had accepted the viewpoints laid down in this document and had presented them to HITLER. The latter strictly refused to rescind the decrees of 8 September 1941.

He told KEITEL:

"Your doubts originate from the soldiery conceptions of a chivalrous war. Here we are concerned with the destruction of an ideology."

KEITEL put these words down word for word and added to his written statement of 15 September 1941:

"I therefore approve and shield these measures."

It was as always, when KEITEL expressed his doubt and HITLER had made his final decision. He stood behind these decisions and did not let his subordinate offices know that he was of a different opinion. Such was his attitude. He is also taking the responsibility for it, within the limit of his official positon.

What KEITEL actually thought is revealed in the excerpt submitted

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The cross-examination of the defendant KEITEL by the representative of the British prosecution has clarified in how far his name has become implicated in this shocking state of affairs. Although it has been clearly established by evidence that KEITEL has neither heard nor transmitted HITLER's murderous order, or that he and the Wehrmacht are not associated with the execution of this order, finally that he opposed by all means in his power the transfer of the escaped officers to HIMMLER, and at least obtained that the officers who had been taken back to the camp were saved; he has, however, the distressing feeling of consciousness of guilt, not to have known what terrible blow German military prestige was bound to suffer throughout the world by such a measure.

2). In connection with the treatment of the Sagan case the French Prosecution laid before the defendant KEITEL document 1650-PS which deals with the treatment of escaped prisoners of war. The first part of this order contains a general order (3 clauses) with the heading:

"The OKW has ordered".

According to this order, escaped and recaptured prisoners of war must be transfered to the Gestapo with postscript: " Para. III".

The defendant KEITEL has declared under oath
(F.M.KEITEL's evidence of April 5th 1946 page 7204 of the German minutes, interrogation by Dr. NELTE)

A: I should first of all like to express my opinion on document 1650 PS. First I must explain that I did not know of this order, that it never

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came into my possession, and that up to now I cannot explain how it came about.

Q: Will you please first say that this document is not a document of the OKW ?

A: I shall come to that.

Q: Please, you must begin with this, to make it clear.

A: This document opens like a document which has been seized at a police-station, with the word: "The High Command has ordered as follows:" Then there are numbers 1,2,3; it then continues: To this I order.....", viz. the Supreme Police Chief of the Reich Security Office, signed MUELLER.

I have certainly firstly neither signed this order of the OKW: nor seen it; of that there is no doubt, from the fact alone, that there are technical espressions in it such as "Para. 3b" and the like, which are police-terms unknown to me, and so I must confirm that I am in doubt as to how this document has originated. I cannot explain it here. There are presumptions, possibilities, I should like to mention them briefly, because I have thought about it a great deal.

1. I do not believe that an office of the OKW

I do not believe that an office of the Supreme Command of Armed Forces, thus the Chief of the prisoners of war system or the Chief of the general armed forces office would have personally issued this order independently; I consider it impossible as it sharply contradicts the general tendency. I cannot recollect having ever received or passed on a corresponding directive of HITLER, and finally, even if it looks like an excuse, there were of course indirect routes which the Fuehrer used irrespective of the competent official channels. It might have been an adjutant who passed on such a thing, without that I found out about it.

I emphasize that this is only a supposition of mine and that it cannot be an exoneration for me. I should only like to note the following facts of the case, that document 1544 PS is a captured order of Service Command VI. Muenster, which deals with the escaped prisoners of war, what has to be done with them and it says there:

"Reference" and mentions various orders from the year 1942 until the beginning of June 1944, and this order, which, according to the circumstances of the facts,

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(Page 186a of orig.)

that it concerns here the question of the escaped prisoners of war, would have belonged to this document if the military office Service Command VI should have had such an order, - that a written order definitely did not exist, and that the military office had not received such an order at all. I cannot say anything more for his exoneration as I am unable to prove it."

The witness LESTHOFF confirmed that the concept "Stufe roman III" and its meaning were unknown to him and to the office of the Supreme Command of the Armed Forces/Prisoner of war affairs; he also stated that, on entering office on 1 April 1944, he did not find an order of this nature, thus also no file notice. But at the same time LESTHOFF stated that he knew about the existence of a verbal order.

Because of this, the defendant KEITEL was not only charged with the contents of this alleged order, but also, as it appeared, with allegedly not having said the truth in one respect because he kept such a verbal order a secret.

Now this uncertainty has been clarified by the presentation of evidence. During his examination on 11 April 1946, the co-defendant KALTENBRUNNER has stated to document 1650 PS:

(Examination of KALTENBRUNNER Page 7647 of the German transcript):

Q): Did you read document 1650 PS US 246?

A): Yes, I read the document.

Q): It concerns here the notorious "Bullet Decree" (Kugel Erlass), as it is emphasized. When did you hear about it?

A): I myself have not known the "Bullet-Decree".

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This must have been a decree, which was issued long before I took over the office. Neither did I see this document in form of a copy of a teletype handed to one.

Q): I point out to you the signature which reads: "signature: MUELLER".

A): In principle, the man was authorized to do that provided such a decree did exist at all. As a supplementary remark, I should like to say that one day, about the end of 1944 and early 1945 when I was at headquarters for reporting - headquarters at that time were already in Berlin, I believe - I heard FEGELEIN, the liaison officer between HIMMLER and HITLER use the term "bullet decree" (Kugelbefehl). At that time, its meaning was entirely strange to me and I therefore asked him what it meant. He answered that it was a Fuehrer order; he did not know more, except that it concerned a special class of prisoners of war. I was not satisfied with this information and sent a teletype message to HIMMLER on the same day asking him to please permit my reading an order of the Fuehrer which was called "bullet decree" (Kugelbefehl). At that time I also did not know that the State Police itself was connected with the "bullet decree" Again a few days later, MUELLER came to see me, by order of HIMMLER, and submitted to me a decree which, however, did not originate from HITLER but from HIMMLER and in which HIMMLER stated that he was passing on to me a verbal Fuehrer order."

From this it is safe to assume that without speaking to KEITEL and without the latter's knowledge, HITLER must really have given such an order to HIMMLER as it is stated in document 1650 PS.

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This confirms the presumption which Keitel expressed in his interrogation, without Kaltenbrunner having previously informed him of his knowledge of orders verbally given by the Fuehrer.

3.) In another case also, the one dealing with the branding of Soviet prisoners, Keitel's statement in the witnessbox has proved to be the unvarnished truth.

The witness Roemer has confirmed in her supplementary affidavit, that the order to mark Soviet Prisoners of War by branding was cancelled immediately after being issued. The statement of defendant Keitel is therefore also, credible according to which this order had been issued without his knowledge, whereby naturally Keitel's responsibility for the acts of the competent party should not be contested.

4.) In this connection I refer finally to the document 744 PS dated 8 July 1943 submitted in support of the charge against Keitel. It deals with the increased Iron and Steel Program, for the execution of which a commitment of the necessary miners from amongst the Prisoners of War was ordered. The first two paragraphs of the document read:

"For the extension of the Iron and Steel Program the Fuehrer ordered on 7 July the unqualified securing of the necessary coal production and the employment of Prisoners of War to cover the labor requirements. The Fuehrer ordered the following measures to be taken with all possible dispatch for the ultimate purpose of assigning 300 000 additional workers to the coal mining industry.

The last paragraph reads:

"In connection with the report to the Fuehrer, the Chief of Prisoner of War Affairs advises every 10 days concerning the progress of the drive. First report on 25 July 1943, reference date: 20 July 1943."

I submit this document, not because of its actual content, which will be taken up by the defense of the defendant Speer, but because of its symptomatic evidential value for the answer of the defendant Keitel, stating that Hitler was particulary interested in Prisoner of War Affairs and himself personally issued the principal orders and those he considered important.

5.) The cases also connected with this complex such as:

Terror-planes
Lynch-Law
Commando- Tasks
Combat against Partisans

will be dealt with by other defense counsels. The defendant Keitel has made his statement regarding these individual facts at his interrogation and cross-examination.

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For the subjective judgment of the facts of the implied crimes the elementary importance lies in the knowledge of them, not only for the conception of guilt, but also for the Prosecution's ultimate resolution, the concurrence, the toleration as well as the omitted counter action. The knowledge of facts comprises:

1) the knowledge of the facts;

2) the perception of the establishment of a goal;

3) the perception of the methods;

4) the conception and faculty for conception of the consequences.

During discussion of the question as to how far the defendant Keitel could have possibly drawn any conclusions from the textual knowledge of the National-Socialist Party Program and from Hitler's book "Mein Kampf" I have already stated the reasons for which Keitel had no perception of a realization by force.

As confirmed by Grand Admiral Raeder Keitel denied the knowledge of an intended war of aggression until the war against Poland broke out. This opinion is certainly a subjective truth, because of Keitel's honest disbelief in a war with Poland, not to talk of any intervention by France and England. This perception, shared by Keitel and other high-ranking officers, was based on the fact that the military potential was too insufficient to risk a war and possibly expect a victory; the more so as it would evidently develop into a war on two fronts. This belief was also supported by the Non-Aggression Pact with USSR of 23 August 19

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However, that is not the core of the problem. The speeches by HITLER before the generals, beginning with the conference of 5 November 1937, in which KEITEL did not take part, permit from time to time the clearer recognition that HITLER did not wish to attain his aims so or so, that is, if not through friendly negotiation, then through war, or in any case, through employment of the Wehrmacht as an agent of pressure. There can be no doubt about that. One may argue over whether the context of the speeches of HITLER, concerning which there are no official notes or records of minutes reproduce more or less the text of the conference correctly. But on what there can be no doubt about is that they permit HITLER's point of view to be clearly recognized.

Accordingly, one must differentiate whether one could believe that a definite plan would come to its execution or whether one had to win the recognition that the general intention for aggression existed. If this recognition did not exist, then this can only be explained by the fact that the generals did not take the question war or peace into their consideration from the basic attitude assumed. According to their point of view, this was a political question, for which they did not hold themselves competent, since, as has been said here, the bases for such a resolution were not known to them and, as the defendant KEITEL has testified, the generals had to have confidence in the leadership of the State, that the latter would only undertake war for pressing reasons. This is the result of the traditional principle that the Wehrmacht is probably an instrument of politics, but may not participate in politics by itself. A principle, which was taken over by HITLER in all its severity. - The court may decide, whether this is to be valued as an excuse.

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KEITEL explained on the witness stand that he recognized the orders, directives and instructions which had such terrible consequences, and that he drew them up and signed them, without allowing himself to be disconcerted by the possible consequences.

This testimony leaves three questions open:

1) the question of the methods in the execution of the orders,
2) the question of conception of the consequences which actually occured,
3) the question of the dolus eventualis.

The defendant KEITEL in his affidavit (Doc Book II, No. 12) presented the influence of the SS Police Organizations on the conduct of the war and the involving of the Wehrmacht in the occurrences, for the complex of the so-called "ideological orders". The record of evidence has shown that numerous Wehrmacht commanders applied such terrible orders partly not at all, partly in a milder form on their own responsibility. The methods of the SS, which gave these orders their terrible effect, were strange and therefore unimaginable to the soldier KEITEL, grown old in fixed concepts. According to his testimony, these effects also did not become known in their terrible extent.

The same holds true for the Fuehrer Decree "Nacht und Nebel". If he did not allow himself to be disconcerted by the "possible" results, as he forwarded these orders, the dolus eventualis in regard to the results taking place can still not be affirmed. It is much more to be assumed that if he had not been able to recognize the horrible effects,

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he could have accepted the consequence, in spite of the prohibition of requests for resignation, which would have freed him from the hard necessity of knowing and would not have pulled him into the whirlpool of events ever more from month to month.

There may be an hypothesis to this: the testimony, however, has furnished certain pertinent facts for the correctness of this. The five-time attempt to leave his position and the resolve to end his life, which was witnessed by Colonel General JODL, give you the opportunity to attribute the sincere desires of KEITEL.

If he did not succeed, then this lies in the circumstances which I have already presented: the unequivocal and, as KEITEL says, unconditional duty of the soldier true to his military oath, to do his duty obediently to the bitter end.

This concept is false then, if it is accordingly so exaggerated, that it lead to crime. It must also be considered, however, that with a soldier, he is accustomed to measure by other standards in war. If all high officers, Field Marshal PAULUS as well, represented the same point of view, one may thus not understand that perhaps, but no one will deny them the honesty of their convictions.

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Dr. Nelt

Final Pleading

The defendant Keitel replied to the question which was put so often during this trial why he did not:

a) refuse to obey or

b) revolt against Hitler

that these questions were not taken by him into consideration, even for an instant. According to his words and his behaviour, he is an absolute soldier. Did he place the guilt on himself with this conduct?

It is entirely a general problem whether a general may or must commit high treason if he realizes that the execution of an order or of a measure violates the international law and - or the laws of humanity.

The solution of this problem presumes the reply to the previous question, which is the "authority" which "allows or orders" criminal high treason. This question appears to me of significance for the reason, because the legitimation is to be established who can allow or order the general to commit high treason, who can "bind and absolve."

As the present state power, which in this case was represented by the Chief of the State, identical with the Supreme Commander of the wehrmacht, does not come into the question, the question is merely whether there is an authority which is above or outside of the individual State Authority, which could "bind or absolve."

Since the struggle for power between Pope and Emperor which dominated the middle ages, has no longer an actual importance in the sense of constitutional law, this power can be impersonal and moral only: the highest command of the unwritten, eternal right is put by the German port Schiller into the words:

"The power of tyranny has a limit ....."

Dr. Melte

Final Pleading

It is only one of the so manifold poetical revelations of world literature, which expresses the deepest yearning for freedom by all peoples.

If there is an unwritten law which corresponds to the unquestionable conviction of all men, it is this that with due consideration for order in the state, there is a limit for the restriction of freedom. Should this be overstepped the state of war of national order against the international power of world conscience will result.

It is important to establish that up till now there did not exist a statute of international law of this kind. It is understandable; for the relativity of the conception of freedom in various states and the anxiety of all states about their sovereignity stand in incompatible opposition against the recognition of an international authority.

The authority which - "binds and absolves" -, which absolves us of guilt before God and the people, is the universal conscience which becomes alive in every individual. He must act accordingly.

The defendant Keitel did not hear the warning voice of the universal conscience. The principles of his soldierly life were so deeply rooted, governed his thinking and actions so exclusively that he was deaf against all considerations which would lead him away from the path of obedience and faithfulness, as he understood them.

This is the really tragic role which the defendant Keitel played in this most terrible drama of all times.

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